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# MILITARY LAW

MAJOR T. KING

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# MILITARY LAW

(TERRITORIAL)

BY
MAJOR T. homas KING
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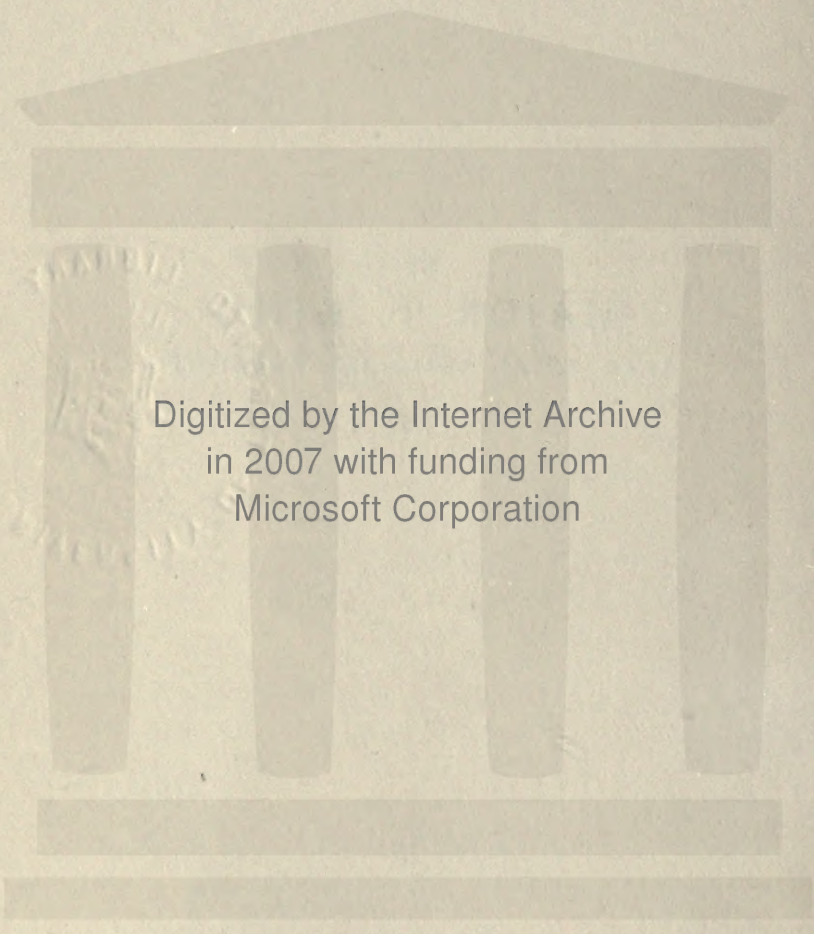

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# PREFACE

The chief object of this work is to assist officers, especially those belonging to the Territorial Army, who are studying military law for promotion examinations. I see no reason why it should not be useful to officers of the Regular Forces, as the examination in D II. is the same as the Territorials undergo.

I have omitted Billeting and Impressment of Carriages, *Part iii. Manual of Law*, and Field General Courts-martial, as there should be no difficulty in finding this matter by aid of the book.

At the end of the book all recent alterations to the *Manual of Law* and the *King's Regulations* are inserted, and can be used to bring official books up to date. Questions on recent Army Orders are set by the examiner, to judge whether officers have kept themselves up-to-date.

Officers are specially advised to note matters referred to in the margin (New) as they are recent alterations.

The author submits his pages to the reader, asking indulgence for any mistakes or shortcomings.

London, *26th September, 1910.*

## REFERENCES TO ABBREVIATIONS

| | | |
|---|---|---|
| *Act* | ... | refers to a section of the Army Act. |
| *R.P.* | ... | „ „ Rule of Procedure. |
| *M.L.* | ... | „ „ Manual of Law. |
| *M.L., Chap. vi.* | | „ „ a certain page or chapter. |
| *A.A.A.* | .. | „ „ Army Annual Act. |
| *K.R.* | .. | „ „ King's Regulations, par., etc. |
| *A.O.* | ... | „ „ Army Orders. |

P. = page of Manual of Law.

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## CHAPTER I

**How to frame charges, and to use the Official Books on Military Law—The Army Act, Army Annual Act, Rules of Procedure, King's Regulations, Royal Warrants and Army Orders—Classification of Military offences and their Punishments under the Army Act. Courts-marshal in relation to Civil Offences—The Provost Marshal.**

1. All military offences are described in *Manual of Law, M.L., Chap. iii., page 15.* The punishments under different circumstances for those offences are contained in the Army Act, from Sections 4 to 41 (*M.L., page 267*).

At *page 259, Sections Army Act 4 to 41* are shown. Suppose it is required to find the punishment for desertion; we find it is in Act 12. The Act begins at page 267. From there proceed till on *M.L., page 278*, desertion is shown as Act 12 and its punishments.

2. How to frame a charge. (*a*) First find under what section of the Army Act the offence comes; (*b*) assume it is drunkenness (*Act 19*). Refer to *page 543* (illustration of charges), and at *page 551* in the margin you find drunkenness.

3. Miltary custody, *vide Manual of Law, M.L., Chap. iv., page 25* (*pars. 1 to 17*), also *K.R., pars. 463-482*, and *Act 45.*

4. The investigation of offences by a C.O., *M.L., Chap. iv., pars. 18 to 30, R.P., 2 to 8*, and *K.R. 483 to 493.*

5. The powers of punishment of C.O., *M.L., Chap. iv., pars. 31 to 38, K.R., 493 to 507*, and *Act 46.*

6. Courts-martial, *M.L., Chap. v., page 35, R.P., 16 to 100, K.R., 572-583*, on *Act 44, 47, 48.*

7. The law of evidence, *M.L., Chap. vi., page 55.*

8. Military Definitions Act, 190.

*Q.* Under what sections of the Army Act would you frame charges, viz. :—

(*a*) A soldier under escort being taken to the barrack detention room, lies down and refuses to move. *Act 10 note*

(*b*) A trooper is found in a public-house placed out of bounds by regimental orders. *Act 11*

(*c*) A sailor of the Royal Navy enlists into the Regular Army. *Act 40 Act 13, note*

(*d*) A sailor who has been dismissed from the Royal Navy, who enlists in the army. *Act 40*

But if his discharge shows he was dismissed from the Royal Navy with disgrace, he is charged under *Act 32*

(*e*) A corporal permits a soldier who is in his custody to escape. How can he be punished ?

If he allowed him to escape wilfully, or without reasonable excuse, he is liable to penal servitude, otherwise imprisonment. *Act* 20

(*f*) A groom ill-treats a horse.

If the horse is used for public service, he could be tried by court-martial. *Act 24 (5)*

(*g*) A soldier strikes a N.C.O. or officer. *Act 8*

(*h*) An officer or N.C.O. strikes a soldier. *Act 37*

(*i*) A private soldier strikes a private soldier. *Act 40*

Because Section 37 states if an officer or N.C.O. strikes a soldier, and omits a private striking a private ; but anyone who strikes a sentry would be charged under *Act 6*

(*j*) A soldier tries to poison himself. *Act 38*

(*k*) Private B, having been punished by his C.O., being escorted back to the barrack detention room, says in the presence of the N.C.O. in charge of the escort, " I'll shoot the C.O. "

Frame a charge. Suppose he said it and private soldiers only were present to hear it. How would it affect the charge ?

In the first case, he would be charged with using threatening language to his superior officer, in that he stated in the presence of the sergeant as above ; otherwise under *Act 40.* *Act 8 (2)*

(*l*) A soldier is found with a pass when out of barracks, which was not a genuine document. *Act 40 M.L. p. 555.*

*Q.* Under what sections of the Army Act are all attempts to commit offences tried ? Give exceptions.

*A.* Act 40, except—

(*a*) Attempt to desert. *Act 12*

(*b*) Attempt to escape from lawful custody. *Act 22*

(*c*) Attempt to commit suicide. *Act 38*

*Q.* What is the Army Annual Act ? What does it provide for ? Give a brief outline of its contents.

*A.* An Act passed annually by Parliament to bring the Army Act into force for the ensuing twelve months. It fixes the number of troops to be maintained at home and in the Colonies (not India).

It states the Army Act shall remain in force for twelve months

and no longer, unless otherwise provided for by Parliament; that is to say, the Act shall expire in the United Kingdom, Channel Isles, and the Isle of Man, on the 30th April, elsewhere within or without His Majesty's Dominions on 31st July (*Army Annual Act, 1909, M.L., page 258*). It states it applies to all persons subject to military law wherever they may be serving, whether the numbers are above or below those stated in its preamble, it fixes prices to be paid for billets, and brings in any amendments necessary for the Army Act.

*Q.* Why is a military code necessary for the government of the Army?

*A.* Because many serious military offences are not punishable by civil law; many others which are unimportant in civil law are serious according to military law, such as striking a superior officer. Civil law is slow in its procedure, and requires trained legal administrators. *Act 8*

*Q.* What is the Army Act? Is it recognized by civil law?

*A.* An Act passed in 1881 to consolidate the Army Discipline and Regulation Act of 1879; is part of the statute law, because it is brought into force by the Army Annual Act sanctioned by Parliament. It is divided into five parts, dealing with :— *M.L. Ch. ii. par. 34*

1. Discipline.
2. Enlistment.
3. Billeting.
4. General provisions.
5. Application of military law, saving provisions, definitions.

*Q.* State what you know as to—

1. Army orders.
2. Royal warrants.

*A. Army orders* are issued by the Army Council monthly, and deal with training, organization, discipline, promulgation of official books, and military regulations with requisite amendments.

*Royal warrants*, made by the King in Council, and issued by the Secretary of State. They deal with pay, promotion, and appointment and retirement of officers and men.

*Q.* What matter is dealt with in the King's Regulations?

*A.* Details of command, interior economy, duties, movements of troops by land and sea, furlough, and various conditions of soldiers' service and discharge, and regimental books.

*Q.* Describe the provisions of the Army Act as to the formation of rules of procedure, and the matters with which they deal.

*A.* Rules of procedure are made by the King through the Secretary of State. They deal with the procedure of courts-martial, convening of such, courts of inquiry, confirming, revision, and carrying out sentences of courts-martial. No rules made shall contain anything contrary to the Army Act; they shall be judiciously noticed; empower evidence to be taken on oath at courts of inquiry. When made these rules are laid before Parliament at the earliest possible occasion. *Act 70*

**MILITARY OFFENCES. Chap. iii. Manual of Law, page 15, Act 4-41.**

*Q.* What do you understand by (*a*) the classification of military offences; (*b*) classification of military offenders?

*A.* (*a*) Grouping together offences of a similar character, and ranging the various groups to impress the soldier with the gravity of the offence, *e.g.*, offences committed on active service come first, then mutiny and insubordination, and lastly, come civil offences under Act 41, *M.L., page 556.* *Act 4*

(*b*) It is desirable that offenders convicted of breaches of military offences should be treated differently to those sentenced to penal servitude, discharge with ignominy, or soldiers convicted of immoral or criminal offences. For example, a soldier sentenced to detention cannot be sent to prison, but if sentenced to imprisonment and not to be discharged with ignominy, he goes to a military prison; but if sentenced to discharge with ignominy for a military offence, he undergoes imprisonment in a special part of the military prison. *Act* 44 *Act 32* *K.R. 607* *K.R. 583* (*x.*) *Act 32* *Act 41*

If sentenced to discharge with ignominy and imprisonment for a non-military offence, or to penal servitude, and for offences under Act 17, Sections 18, 41, he is placed in a public prison. It is lawful to send a man from a military prison to detention barracks. *K.R.583* (*ii.*) *K.R. 602*

*Q.* Define Mutiny, with any modifications in military law. *Act 7*

*A.* The act of two or more persons subject to military law who join to resist lawful military authority. Persons are tried for mutiny collectively. The offender is not barred from trial by a lapse of time since the offence was committed; liable to death sentence on conviction. *M.L. Ch. iii. par. 4* *Act 161*

*Q.* What punishment can be awarded to a soldier who strikes, uses, or offers violence to a superior?

*A.* (1) If the superior is in the execution of his office, he is liable to be sentenced to death. If on active service the superior is not in the execution of his office, penal servitude, otherwise imprisonment or less punishment. *Act 8*

*Q.* Define terms (*a*) "superior officer"; (*b*) "execution of office"; (*c*) "offer of violence." *Act 8 note*

*A.* (*a*) Officers, warrant officers, and N.C.O.'s are superior officers of private soldiers, as between officers those of senior rank, or those senior in their present rank.

(*b*) *Execution of office*, when performing any act required by regulation, or the custom of the Service, or when interfering for the good of the Service. *Act 8 note*

(*c*) *Offer of violence.*—Any defiant act or gesture which, if completed, would end in actual violence, *e.g.*, a man drawing a bayonet behind the bars of a cell at such a distance that striking a superior was impossible, would not come under this term; but pointing a loaded rifle at a person would be an offer of violence. *Simmonds on "Court-Martial."* *Act 8 note*

*Q.* What punishments can be awarded for disobeying the command of a superior officer?

*A.* If the command is given by a superior officer in the execution *Act 9*

of his office, and it is a lawful one and refers to a military duty, if disobeyed in a wilfully defiant manner, liable to sentence of death; but if not wilfully disobeyed on active service, liable to penal servitude, otherwise imprisonment or less punishment.

*Q.* Define the term, "A lawful command," with its limitations.

*A.* A command justified by military law and not contrary to civil law; given to quell a disturbance or execute a military duty. *M.L. Ch. iii.*

If an officer ordered a soldier to fire on an unoffending citizen, it is an obviously illegal command, and a refusal to obey would be justified. Religious scruples are no excuse, *e.g.*, to refuse to go into the trenches on Sunday. *par. 10*

*Q.* Define "Breaking out of barracks." *Act 10*

*A.* Absent from barracks when it was the soldier's duty to be there; it is immaterial whether the man managed by violence, artifice or otherwise to absent himself without proper authority.

*Q.* How would disobedience of King's Regulations be charged? *Act 40*

*A.* Under Act 40, unless the paragraph was published in regimental orders, etc., and then under *Act 11*. *Act 11*

*Q.* Define Desertion. Can it be judged by the time the man was absent, of the distance from barracks when apprehended, and could a soldier on furlough be tried for this offence? *Act 12 M.L. Ch. iii. pars. 15, 16, 17*

*A.* Desertion implies an intention of not returning to His Majesty's service, but a man could be tried for desertion who evades by absence, embarkation for foreign or active service, or who conceals himself if wanted to aid the civil power, notwithstanding he intended to return. *M.L. Ch. iii. par. 17* Length of time is no criterion, as a man might be absent through drunkenness and wait till he is sober to return; distance also is no proof; a man might go miles to see his friends; but being found on a steamer starting for America with a ticket in his possession, there can be little doubt of his intention, irrespective of time or distance. If a soldier on furlough conceals himself so that orders cannot reach him, he could be tried, but the intention to desert must be established.

*Q.* When a soldier deserts or fraudulently enlists, must he be tried by court-martial?

*A.* A soldier who confesses these offences can have his trial dispensed with by competent military authorities, but he incurs forfeitures on conviction, as if he was found guilty by court-martial, viz.:— *Act 73*

1. All medals with gratuities and annuities attached thereto (except V.C.).

2. Service towards pension but not discharge.

3. If a soldier has been three years clear of an entry in the regimental conduct sheet, he cannot be tried for those offences by court-martial. *Act 161 K.R. 1916*

*Q.* What punishments can a court-martial award for desertion? *Act 12*

*A.* Desertion on active service, liable to death. Not on active

service, liable to imprisonment or less punishment, but for second offence, liable to penal servitude.

*Q.* What punishment can be awarded to persons subject to military law who assists soldiers to desert, or to civilians who do so, or conceal deserters ? *Act 14* *Act 153*

*A.* Assisting, or being cognisant that a soldier intends to desert, if not reported in the latter case, liable to imprisonment. If a civilian assists a deserter or conceals one, he is liable to six months on conviction by a civil court.

*Q.* How can a civilian be punished who falsely states he is a deserter ? *Act 153*

*A.* Liable to three months' imprisonment by a civil court.

*Q.* How is a soldier's service affected by confession of, or conviction by, court-martial of desertion or fraudulent enlistment ? *New A.O.*

*A.* If a soldier is serving on his original engagement (*i.e.*, during the first twelve years of his service), he forfeits all service prior to his conviction by court-martial, or date of his trial being dispensed with. The same applies to fraudulent enlistment. *Jan., 1910*

If he deserts after he has re-engaged, he forfeits service performed during re-engagement up to date, and should he fraudulently enlist he forfeits service from the day following which he re-engaged (*i.e.*, day after twelve years' service).

A soldier's service is restored— *New A.O., Jan., 1910*

(*a*) *As a matter of right ;* (*b*) *as a privilege.*

(*a*) When he has served for three years without an entry in his regimental conduct sheet, or on promotion to the rank of sergeant ; (*b*) as a privilege if recommended for good service, by order of the Army Council, or if recommended by a court-martial. *K.R. 273* *R.P. 49*

*Q.* Can persons be arrested on suspicion of being deserters ?

*A.* Any person can apprehend a man he thinks is a deserter, and a magistrate, if satisfied with the evidence on oath of the persons who gives information, can issue a warrant for the man's arrest. *Act 154*

*Q.* What procedure is observed where persons surrender themselves as deserters ? *K.R. 517*

*A.* A soldier in uniform, or where evidence of his identity is immediately available though dressed in plain clothes, can be placed in military custody, otherwise handed over to civil custody.

*Q.* By whom is a protecting certificate issued, and why ?

*A.* The soldier's brigade commander issues it when the man is not to be retained in the Army, to prevent him hereafter being arrested as a deserter. *K.R. 518*

*Q.* If a soldier under orders for foreign service deserts before embarkation, what must be proved, and how can the court-martial act regarding their finding ?

*A.* The roll of the draft, or a certified copy, must be produced to prove the man was liable for the duty ; oral testimony is not sufficient, definite proof must be produced that he wilfully absented *Act 56* *R.P. 44* *M.L.*

himself, otherwise the court record a special finding of absence without leave. *p. 573*

*Q.* In cases of enlistment, or desertion, fraudulent enlistment, or false answer on attestation, where must the original document be produced, and where can a copy be sufficient ? *Act 13* *Act 161* *Act 32.*

*A.* (1) Merely to prove the enlistment or discharge of a soldier, a certified copy signed by the officer who has custody of the original document is evidence ; but for false answer on attestation, desertion, or fraudulent enlistment, the original, which shows the soldier's signature, must be produced.

*Q.* Define Fraudulent, and give an example of how an " attempt to commit this offence could happen " ? *Act 13*

*A.* (1) A person when belonging to the Regular Forces, a Territorial or Militiaman, when embodied, or a Yeoman on actual military service who, without declaring that he is one of the above, enlists or enrols himself in the Regular Forces or any Force raised in India or a colony.

(2) A soldier of the Regular Forces who enlists into the Royal Navy, Territorials, or Reserve Forces.

(3) A soldier who offers himself for enlistment, but who is recognized before being enlisted, *e.g.*, a soldier might obtain a suit of plain clothes and go to enlist, but might be recognized by a N.C. officer before he was sworn as a soldier. *Act 40*

*Q.* What is an absconding recruit ?

*A.* A man who has been enlisted but deserts en route when sent to join his unit. Such cases are at once reported to the police. *K.R. 514*

*Q.* Can a soldier claim his discharge on the ground of his enlistment ?

*A.* Yes, unless he has drawn pay for three months as a soldier. *Act 100*

*Q.* Give example of False Answer on Attestation, and can a man be punished for giving a false age ? *Act 33*

*A.* Army Reserve man, Yeoman, not on actual military service, a Territorial, or Special Reserve man if not embodied. A sailor of the Royal Navy who denies he is one of the above, an apprentice or married man, or men who have served in the Army, or have been medically rejected when they offered to enlist, make false statements. False age is not usually an offence on enlistment. *Act 96* *Act 33* *note*

*Q.* Can aliens be enlisted ? *Act 95*

*A.* Two per cent., if sanctioned by the Army Council, but cannot be promoted to a higher grade than that of warrant officer. *Act 182*

*Q.* Define the term Discharge with Ignominy. *Act 32*

*A.* Discharged from His Majesty's Forces with disgrace, or discharged on account of misconduct, on conviction of a felony, or by a sentence of penal servitude. *M.L. p. 554*

*Q.* What rules are in force as to the enlistment of apprentices ? *Act 99*

*A.* If an apprentice enlists without his employer's consent, he can be taken out of the Army, provided his employer on oath satisfies a magistrate that the youth was bound to him for at least four years, and was under sixteen years of age at the time. If he gives up *Act 33*

the indenture (and the man is kept in the Army), he shall be entitled to any bounty due to him by the apprentice.

*Q.* Define the terms Scandalous Conduct, Disgraceful Conduct. *Act 16*

*A.* Scandalous Conduct is a term applied to an offence for which an officer is tried by court-martial, when such reflects discredit on the Service, that the offender is unfit to be an officer. If the offender is found guilty, the court must sentence him to be cashiered, *i.e.*, peremptory punishment. Disgraceful Conduct applies to soldiers, such as fraud, stealing, etc. *M.L. p. 549* *Act 17* *Act 18*

*Q.* Distinguish between Theft and Embezzlement. *M.L.*

*A. Theft* is taking property belonging to another person by fraud or without the owner's consent. *Ch. iii. pars. 23, 24.*

*Embezzlement* is when a person is entrusted with the care or distribution of public or regimental goods or monies, he converts such to own his use, or some one connected with him, *e.g.*, pay-sergeants fraudulently spending company money. *Act 17* *M.L. p. 549*

*Q.* Explain the terms Feigning, Malingering.

*A. Feigning*, pretending to be ill when no such symptons existed on medical examination. *Act 18 note*

*Malingering* implies some deceit, such as taking a drug or some other act which, though it did not produce disease or retard the cure, yet produced the appearance of the disease supposed to exist. *M.L. p. 550*

*Q.* If a soldier was found to be in possession of goods the property of a comrade, would he be charged with theft? *K.R. 556*

*A.* Unless there was absolute proof of theft he would be tried under Act 40, as soldiers often borrow one another's property. *M.L. Ch. iii. pars. 23, Act 18*

*Q.* If a pay-sergeant is deficient of company money, how could he be charged? *K.R. 557*

*A.* Under Act 17 or 18, but if there is ground for belief the deficiency was caused through neglect an alternative charge under Act 40 would be added.

*Q.* Give examples of cases under Act 18, Subsec. 5, offences of a fraudulent nature. *M.L. p. 551*

*A.* A canteen assistant, with intent to defraud, adds water to a cask of beer belonging to the canteen; an officer's servant goes to a tradesman and tells him his master sent him to obtain a suit of clothes, he does so without his master's knowledge, and then he sells the clothes and pockets the proceeds.

*Q.* What punishments can a court-martial award soldiers for drunkenness? *Act 19*

*A.* A sentry drunk on active service is liable to be sentenced to death, and in addition a court-martial has the power always to fine an offender, maximum £1, together with or without imprisonment or detention. *Act 6 K.*

*Q.* How would a soldier be charged who is deficient of his arms kit, medals, etc? *Act 24 M.L. p. 552*

*A.* If there is evidence to prove he pawned or sold them, he could *Act 24*

be charged on either of those offences, *e.g.*, making away with, by pawning. If there is a difficulty to prove pawning or selling, an alternative charge under Act 40 added, except a soldier cannot lose a medal by neglect. *note* *K.R.* *1754.*

*Q.* If a soldier is deficient of articles, where is their value inserted in a charge ?

*A.* If tried by court-martial the value is only entered when the loss has to be made good to the public. *K.R.* *563*

*Q.* Can a civilian be punished for buying or taking in pawn soldiers' kit, etc., or taking pension papers as security for debt ?

*A.* (1) For the first offence, liable on conviction by a civil court to a fine, maximum £20, and treble the value of the goods. *Act 156*

(2) For the second, fine not less than £5 or more than £20, or to a term of imprisonment not exceeding six months, with or without hard labour, and treble the value of the goods.

*Q.* What happens at a court-martial if (1) a person subject to military law insults the court ? (2) If a civilian does so ? *Act 28* *Act 126*

*A.* If the accused, subject to military law, does so, the president, after cautioning him, could award twenty-one days' detention, if a soldier, or apply for his trial by court-martial, other than the court which is trying him.

*If a civilian*, the president would certify in writing the fact, and the offender would be dealt with by the civil powers.

*Q.* What is the object of Act 40, *i.e.*, conduct to the prejudice of military discipline, and what must be proved ? *Act 40* *M.L.*

*A.* To provide for the trial of offences which do not come under any of the other sections of the Army Act, it must be proved the accused committed the offence, and that the offence was to the prejudice of good order and military discipline. *Ch. iii.* *par. 32*

If a person was tried on a charge under this section, which could have been tried under another section of the Act, the conviction would hold good, provided the proceedings of the court-martial were legal.

*Q.* Have courts-martial jurisdiction to try civil offences ?

*A.* Yes, with the following exceptions : The offences of murder, manslaughter, treason, felony. Rape can only be tried by court-martial on active service, without H.M. Dominions, *e.g.*, Egypt ; within H.M. Dominions (except the United Kingdom) if no civil court exists within a hundred miles. *Ch. iii.* *M.L.* *par. 34* *Act 34*

*Q.* Define the term Burglary.

*A.* Burglary is breaking into and entering a dwelling between the hours of nine o'clock at night and six o'clock in the morning. *M.L. vii.* *66*

*Q.* Explain what you know about the following offences :—

(*a*) Forgery.

(*b*) Perjury.

*A. Forgery.*—Any person who, with intent to defraud, makes, alters, utters, or puts any signature to, or knowingly utters any documents by which another may be defrauded along with the *M.L.* *p. 144* *M.L. vii.*

uttering, making, altering, or signing, it is requisite to prove, first, the intent; second, the possibility of defrauding or injuring in some material respect. *69*

*Perjury.*—When a person duly sworn or on affirmation asserts some fact or condition of things material to the issue, which he does not believe to be true, or of which he is ignorant, or a statement, though literally true, is made for the purpose of creating a false impression. *M. vii. par. 72* *M.L. vi. 45*

To prove it, the prosecutor would produce the proceedings of the court-martial before which the alleged perjury took place. This would prove if the statements were material to the issue.

A member of the court must prove, or some one who was present, that the prisoner swore to the facts he is charged.

Maximum punishment by law—seven years' penal servitude.

## THE PROVOST MARSHAL

*Q.* By what authority is the provost marshal appointed, and what are his duties, etc. ?

*A.* In the United Kingdom he is appointed by the King; abroad by an officer empowered to do so, such power being contained in the warrant authorizing such officer to convene a general court-martial. The provost marshal or his assistant can, when abroad, arrest any persons subject to military law (when on active service); this includes civilians who hold permission to follow the Army, and the provost marshal can apply for their trial by court-martial and see the sentences carried out. He has the powers of a governor of a military prison as regards offenders placed in prison. *Act 74* *K.R.599* *M.L. p. 601*

## CHAPTER II

Persons subject to Military Law—Resignation and Removal of Non-Commissioned Officers—Discipline, General Instruction—Military Custody and Arrest—Investigation of Charges by Commanding-Officer—Troops aiding the Civil Power.

### CIVIL LAW AS REGARDS SOLDIERS' DEBTS OR SUPPORT OF WIFE AND CHILDREN.

### PERSONS SUBJECT TO MILITARY LAW.

*Q.* When are officers and men of the Territorial Forces subject to military law? Can they be called out to aid the civil powers? *Act 175 (3a)*

*A.* Officers and the permanent staff are always subject to military law.

N.C.O. and men (1) when embodied; (2) training or exercising alone or with any Regulars; (3) when attached to or acting as part of the Regular Forces; (4) when called out for actual military service for defence in pursuance with any agreement. When subject to military law Territorials can be called out in aid of the civil powers. *Act 176 (b)*

*Q.* Apply military law to the following persons:—(*a*) half-pay officer; (*b*) officers and men of the Yeomanry; (*c*) pensioners.

*A.* (*a*) *Half-pay officer* means one who is temporarily placed on the half-pay list, but will return to full pay probably; he is always subject to military law. *M.L. p. 414*

(*b*) Officers of the *Yeomanry* and the permanent staff are always subject to military law. *Act 176*

*N.C.O. and men* (1) when on actual military service; (2) called out to aid the civil powers; (3) when trained alone, or with any portion of the Regular Forces; (4) when attached to or otherwise acting as part of the Regular Forces.

(*c*) *Pensioners*, when employed on military service and under the orders of an officer of the Regulars. *Act 176 (4)*

*Q.* When are Reserve officers also N.C.O. and men of the Army Reserve subject to military law? *Act 175 (10)*

*A.* Army Reserve officer, when ordered on any duty or service, etc., is liable as a Reserve officer. *Act 175 (5)*

Officers of Reserve battalions are always subject to military law.

N.C.O. and men (*a*) when called out for training or exercise; (*b*) to aid the civil powers; (*c*) called for permanent service; (*d*) when employed on military service under an officer of Regulars.

*Q.* What modifications are made as regards military law to civilians who accompany an Army on active service?

*A.* Persons accompanying an Army are given the status of officer, and are subject to military law as such; otherwise if not of that status they are treated as soldiers, but cannot be punished by their C.O. or tried by regimental court-martial. *Act 184 (a)* *Act 180*

Natives of India are subject to the Indian Articles of War.

*Q.* How does military law apply to Colonial troops?

*A.* When serving with Regulars on active service, if raised at the Imperial expense, they are subject to the provisions of the Army Act. If raised at Colonial expense, subject to the law of the colony. Any deficiences of their law may be remedied by application of the Army Act. *Act 17 footnote (3)* *Act 177, note*

*Q.* What recent order has been issued regarding officers and men of Colonial Forces or a force raised in India if they are sent to the United Kingdom for service? *New A.A. Act, 1909*

*A.* All officers of above Forces attached to, or doing duty with Regulars, Reserve, or Auxiliary Forces. *Act 175 (11)*

N.C.O. and men when attached to, or otherwise acting as part of, or with any portion of Regulars, Reserve, or Auxiliary Forces, are subject to military law.

*Q.* Where do soldiers find the punishments they are liable to for offences under the Army Act? *K.R. 461*

*A.* Sections 4-41 of the Army Act are read out to troops every three months.

*Q.* When are marines subject to military law?

*A.* When employed for a length of time on land, the senior naval officer may decide they are subject to military law. *Act 179 (15b) note*

## KING'S REGULATIONS.

### Par. 301. Resignation and Removal of N.C. Officers.

*Q.* May a N.C.O. be allowed to resign his rank?

*A.* Yes, with his C.O.'s consent, but not in order to escape a court-martial, unless sanctioned by an officer not below the rank of brigadier-general. The fact is recorded in the soldier's attestation paper, signed by him and his C.O.

*Q.* An orderly-room sergeant ranking as a color-sergeant having been removed from his appointment as such, is found not to be qualified to perform the duties of his permanent rank, can he be reduced to a lower grade or to the ranks? *K.R. 303* *Act 183*

*A.* In India, by order of the commander-in-chief; elsewhere by order of the Army Council.

*Q.* A N.C.O. is convicted by the civil authorities. What further steps are taken in the matter?

*A.* The C.O. should report to an officer not below the rank of brigadier-general. If this officer considers the N.C.O. should be reduced, he reports to the Army Council, because a person subject to military law, who has been convicted by the civil powers, cannot hereafter be tried for the same offence by court-martial. *K.R. 516* *Act 162*

## KING'S REGULATIONS.

### Pars. 431-463. Discipline, General Instructions.

*Q.* What instructions are given to commanding officers as regards the prevention of crime ?

*A.* Use every effort to prevent crime, don't screen it. *K.R. 433*

*Q.* What principles should guide officers and N.C.O.s in dealing with soldiers ?

*A.* Ensure discipline and avoid offensive language, thereby gain respect. *K.R. 435*

*Q.* How should officers reprove N.C.O.s ?

*A.* Not in the presence of private soldiers, except for the sake of example as a public reproof. *K.R. 437*

*Q.* Can an N.C.O. be tried by regimental court-martial ? *Act 47*

*A.* Not above the rank of corporal, except by order of a superior officer, unless on board ship, but if one of H.M. ships in commission, the captain's written sanction to assemble the court is required. *M.L. p. 607*

*Q.* What instructions should be given to soldiers as to their dealings with civilians ?

*A.* To respect magistrates and civil authorities, and to treat others with courtesy. *K.R. 441*

## MILITARY CUSTODY AND ARREST.

### Manual of Law, Chap. iv. pars. 1 to 17; King's Regulations, pars. 463-482; Army Act 45.

*Q.* Define military custody (not under sentence).

*A.* (*a*) Military custody in the case of officers, N.C.O.s, or warrant officers, means arrest, and in extreme cases being placed under the charge of a guard or picquet. *K.R. 463* *Act 182* *Ch. iii. M.L.*

(*b*) Private soldiers, open arrest ; in such case they attend parades, but do not leave barracks till the case is decided, and shall not be detailed for duty. Close arrest is being placed in guard detention room. *K.R. 473*

*Q.* Distinguish between open and close arrest of officers. When may a junior place a senior officer under arrest, and who can release an officer from arrest ? *K.R. 466*

*A.* An officer under open arrest may take exercise within certain limits. If under close arrest he takes exercise under supervision, and by order of a medical officer. When under arrest an officer is deprived of his sword, sash and spurs, and must not appear at mess or any public places of entertainment. *K.R. 467* *Ch. iv. par. 3*

An officer is usually placed under arrest by order of a senior officer ; in cases of fray or disorder, a junior can place a senior under arrest. *M.L. Ch. iv. pars. 5, 2*

The officer who placed an officer under arrest cannot release him, but must obtain the sanction of superior authority (except when placed under arrest by error) ; to check officers being placed *K.R. 468* *K.R.*

under arrest without sufficient reason, in every case of arrest a report to superior authority is forwarded. *469*

*Q.* What is the duty of a commander of a guard when an offender is handed over to his custody ? *Act 45 M.L.*

*A.* The commander of the guard should receive the charge against the accused in writing from the person who gives him in custody, and signed by him. If no charge is given, the commander shall endeavour to obtain one within twenty-four hours ; otherwise report the fact to the officer to whom he sends the guard report ; and that officer, if evidence is not forthcoming within forty-eight hours, may release the offender. *Ch. iv. pars. 15, 16*

*Q.* Should a soldier distinctly disobey an order given to him by an N.C.O., how should the latter act ? State what restrictions are placed upon junior N.C. officers as to placing soldiers in custody ?

*A.* The N.C.O. will obtain the assistance of an escort to conduct the man to the guard detention room, avoiding coming in contact with the accused, and have him placed in close arrest, then report the case to his company commander or the adjutant. Acting bombadiers or lance corporals of less than four years' service, except in cases of personal violence or detached duties, will not place soldiers in arrest, but report to the orderly sergeant. *K.R. 477*

*Q.* What course is open to an officer commanding troops on the line of march to provide for the safe keeping of offenders ? *476, Act 132, K.R. 41* *K.R.*

*A.* On the commanding officer's written application the soldier can be placed in a police station for a period not exceeding seven days.

*Q.* What precautions should the commander of a guard take if a soldier is handed over to him in a state of drunkenness ? *K.R. 478*

*A.* Deprive him of his boots except in severe weather, visit him every two hours ; in case of illness send for the medical officer, and see the man is not brought before his C.O. till he is sober.

*Q.* Is a soldier in custody liable for duty ? *K.R.*

*A.* No, except by order of his C.O. to bear arms on the line of march or on an emergency. To be relieved of cash or stores which are in his custody, and when in detention barracks to perform exercise by order of the governor. *482*

## INVESTIGATION OF CHARGES BY THE COMMANDING OFFICER.

**Manual of Law, Chap. iv. par. 18-30 ; King's Regulations 483-492 ; Rules of Procedure 1-8.**

*Q.* If a soldier is in mutiny custody, within what time should his case be investigated ? *R.P. 2*

*A.* His C.O. should do so within forty-eight hours, exclusive of Sunday, Christmas Day, Good Friday, if not, report in writing to district commander.

*Q.* Explain courses open to a company commander when he investigates a case. What are his powers of punishment ?

When a soldier elects to be tried by a District Court-martial under provisions of Sec. 46 (8) of the Army Act, his commanding officer may if he thinks the circumstances warrant it release the accused pending trial.

Page 21.—*After* line 16 from bottom *insert* "A soldier on electing to be tried by district court-martial under the provisions of Section 46 (8), Army Act, will be at once released from arrest pending trial. In exceptional cases the C.O. may, however, keep the soldier in confinement, but in such cases he will at once report his action to the officer to whom the application for the soldier's trial will be made, giving the reasons for his action." *A.O.* 14 1911. *New K.R.* 490 *A.*

Page 21.—*Insert* at foot of page "3. When proposing to deal with a case summarily, a C.O. will satisfy himself that the evidence produced before him is sufficient to disclose the exact nature of the offence. If he is not so satisfied he should remand the case for further enquiries, so that the offence as entered in the Guard Report may be substantially the charge upon which the accused will be arraigned in the event of his electing to be tried by district court-martial under the provisions of Section 46 (8), Army Act. When once the accused has elected to be tried upon the charge read out to him from the Guard Report, it should in no case be added to, or increased, in gravity. *A.O.*164 1911. *New K.R.* 487 *A.*

*A.* All charges are investigated in the presence of the accused and witnesses against him.

1. The commander can award his punishment on *A.F., B. 281.* All punishments are sent for the C.O.'s approval weekly; he may reduce but not increase the punishment.

2. If the offence has been entered against the accused in the guard report, and the company commander deals with the case, he shall inform the orderly room. *K.R. 485* *K.R. 486*

3. If the offence has not been entered in the guard report, and the commander does not deal with it, he will send it to be entered in the guard report, and will attend with the soldier when he is brought before the C.O., bringing the company conduct sheet with him. *K.R. 1916*

A company commander can reprimand a N.C.O. not above the rank of corporal (this does not include a *lance* sergeant), but he cannot severely reprimand any N.C.O.. *K.R. 499* *New*

The following punishments as regards private soldiers:—Admonish, extra guards and picquets, fines for drunkenness, absence without leave where pay is automatically forfeited by Royal warrant, and seven days' C.B. Officers under three years' service may be restricted by the C.O. to an award of three days' C.B. *K.R. 501*

*Q.* When a C.O. is in doubt as to whether he can punish an offence or not committed by a soldier, what does he do?

*A.* Determine under what section of the Army Act the offence comes, and refer to *King's Regulations, par. 487.* *K.R. 487*

*Q.* Describe how a C.O. investigates a charge against a soldier. What are the privileges of the accused? *M.L. Ch. iv. par. 21, 25*

*A.* The charge is read to the accused in the presence of witnesses who make their statements, and can be examined by the accused, who can make his defence, and can call his witnesses. He can demand the evidence against him to be taken on oath. *R.P. 3*

If the C.O. intends to award a soldier a punishment which entails loss of pay, before doing so he shall ask him if he will take his punishment, or be tried by a district court-martial. *Act 46 (8)*

*Q.* What courses are open to a C.O. when he deals with a charge against a soldier? *R.P. 4*

*A.* 1. Dismiss it for want of evidence, or if it is not a serious offence and evidence is not forthcoming within a reasonable time; and unless it is important to establish the guilt or innocence of the accused, if it is doubtful whether the evidence will lead to a conviction by court-martial, the C.O. usually dismisses the case. *K.R. 490* *K.R. 488*

2. Punish the soldier, or order a regimental court-martial to offenders not above the rank of corporal, or apply for a superior court to deal with the case. N.C.O. above the rank of corporal (not a warrant officer) shall not be tried by regimental court-martial except by order of superior authority. *K.R. 493* *Act 47* *Act 182* *K.R. 438*

On board ship a N.C.O. can be tried by regimental court-martial, but if one of His Majesty's ships in commission, the captain's written sanction is required, refer the case to superior authority. *M.L. p. 606 par. 7* *R.P. 4*

*Q.* Can a C.O. pay a fine for a soldier who has been convicted by a civil court ? *Act 138 note*

*A.* Yes, and the amount can be stopped from the soldier's pay.

*Q.* Explain what precautions are taken as to debts incurred by soldiers to civilians.

*A.* The G.O.C. of a command shall every three years insert a notification in a local paper that soldiers cannot be placed under stoppages of pay for debts contracted to civilians, *i.e.*, crying down credit. *K.R. 442*

## AIDING THE CIVIL POWER.

*Q.* What authorities have power to requisition troops to aid the civil power ? *K.R. 494*

*A.* In boroughs and cities the mayor or chief magistrate, and no other magistrate except in case of emergency. In Ireland the requisition can be made by a divisional commissioner, resident magistrate, chief or assistant commissioner of the Dublin Police, or officer of the Royal Irish Constabulary. *A.O. Dec., 1908*

When a resident magistrate does so, his requisition will be sent to the officer commanding the troops, through the office of the city, county or district inspector of police.

*Q.* Who decides the strength and composition of the force required ?

*A.* The military authorities. If the civil officer mentions the number of troops required, it will only be a guide as to estimating the numbers wanted.

*Q.* Can a military officer order troops out to aid the civil power ? *A.O. Dec., 1908*

*A.* Except in cases of great and sudden emergency (as explained in *K.R. 967*), an officer will not order troops out in aid of the civil power without a requisition in writing or by telegram of a chief constable or magistrate (or sheriff in Scotland or Ireland) having jurisdiction in the place where the services of the troops are required.

Duties and responsibility of an officer called out in aid of civil power :

Cease firing as soon as possible consistent with order being kept, and don't fire except as a very extreme measure.

Party he commands is to be marched to the required place in a proper formation, and the commanding officer is to report himself to the magistrate.

Overhead of the mob do not fire, as by so doing innocent people may be injured.

Written report rendered daily to the adjutant-general, and to the officer commanding the station from which the troops are detached.

Explain to the mob before firing that when fire is opened, fire will be effective.

Responsible for his actions if he fires, whether with or without orders from the magistrate.

*Q.* Under what circumstances can the civil authorities claim to take a soldier out of the Army ?

Page 22.—*After* line 16 from bottom *insert* " Before the *A.O.* 251 Proclamation is read the 'alarm' should be sounded on a 1911. bugle so as to call attention to what is going to be done." *K.R.* 954.

*A.* On account of a charge of or conviction for crime, *i.e.*, a felony, misdemeanour or crime punishable with fine or imprisonment, or greater punishment.

For debt or damage exceeding £30 over and above all costs of the suit. *Act 144*

*Q.* To what extent can a soldier be compelled to support his family, if he has deserted them ?

*A.* If a soldier deserts his family, and it appears to the Secretary of State his family are destitute, the man, if a N.C.O., can have his pay stopped 1s. per diem on account of his wife and children ; or for a bastard child 6d. per diem. Men below the rank of sergeant, 6d. for wife and children, and 3d. in case of bastard child. This applies to Special Reservists when subject to military law. *Act 145*

Page 23.—*Add* "Under Section 145 (2) (b), Army Act, power exists without an Order of Court to enforce stoppages from the pay of a soldier towards the maintenance of his legitimate children and his wife." *W.O. Memo.*

ARMY (ANNUAL) BILL.

The Army (Annual) Bill (101), the text of which was published on 25th March, 1912, contains certain amendments, the principal of which are :—

(1) The amount which may be deducted from the pay of a soldier in respect of a bastard child shall be increased in the case of sergeants and upwards to 7d., and in the case of those of lower ranks to 4d.

DUTIES OF THE TROOPS.

*Page 22, line 22, add to "Aiding the Civil Power."*

An Army Order was issued containing a re-draft of the provisions of the King's Regulations on the subject of the duties of the troops when called out in aid of the civil power. The only alteration of substance is the order that troops are not to be moved from a distance for this purpose without previous reference to the War Office.

The Regulations provide that "except in cases of great and sudden emergency, an officer will not order out or take out troops for the purpose of aiding in the suppression of riot, the maintenance of the public peace or the execution of the law, or of assisting the civil power in case of an expected riot, without the requisition in writing or by telegram of the civil authority."

## CHAPTER III

The Commanding Officers Powers of Punishment—The Summary of Evidence—The application by the C.O. for the accused to be tried by Court Martial—The accused prepares his defence—The Regimental Conduct Sheet.

### THE COMMANDING OFFICER.

**Manual of Law, Chap. iv. pars. 31-38. Army Act, Sec. 46. King's Regulations, pars. 493-507.**

*Q.* What punishments can a C.O. award to N.C. officers?

*A.* Severe reprimand (which is recorded in the regimental conduct sheet), reprimand or admonish or deprive a N.C.O. of his acting rank, or anything in the nature of an appointment when his rank is not above corporal's. *K.R. 1916 (iv.). K.R. 499. K.R. 302. K.R. 493. A.O. Jan., 1910 Act 46*

*Q.* What are minor punishments?

*A.* Those which do not affect a soldier's ordinary pay, viz., admonition, extra guards or picquets, and C.B., maximum, fourteen days, which only apply to private soldiers. *K.R. 493 K.R. 499*

*Q.* What are the powers of punishment of a C.O. as regards private soldiers? Has an officer commanding a detachment the same powers? *K.R. 493*

*A.* 1. A C.O., if a field officer, can award detention up to twenty-eight days; if under that rank, seven days' detention. *Act 46*

2. Any C.O. can award twenty-eight days for absence without leave, but when the absence exceeds seven days he cannot award more detention than the number of days the soldier was absent. *Act 46*

3. Fines for drunkenness according to scale to private soldiers, maximum 10s., at one award. *K.R. 512*

4. Confinement to barracks at one award, fourteen days; the first ten days carries punishment drill. *Act 493*

5. Stop a soldier's pay for loss or damage to arms, kit, etc. *Act 138 (4) M.L. Ch. iv. par. 34*

6. On active service, award field punishment to private soldiers, maximum, twenty-eight days, and order the offender to forfeit all pay for a period commencing on the day of the sentence, not exceeding twenty-eight days. *Act 46 M.L. p. 598*

The officer commanding a detachment, if a substantive major, has the full powers of a C.O.; otherwise his powers may be restricted by his C.O., or by the officer commanding the locality in which he is serving. The detachment commander in case of emergency can act regardless of any restriction placed upon him, but shall report the fact to superior authority. *K.R. 547*

**ARMY ANNUAL ACT, 1910.**

*Q.* What is the maximum amount of detention, *i.e.*, confinement to barracks, a soldier can undergo by order of his C.O. ? *K.R. 493*

*A.* Twenty-eight days' detention continuously, or twenty-eight days for absence without leave; fourteen C.B. at one award, or twenty-eight days C.B. by two or more awards. *K.R. 494 (v.)*

*Q.* Comment on the following punishments awarded by Colonel B :—

*A.* (*a*) Private A strikes Private B—seven days' detention.
(*b*) Private C absent from picquet—eight days' detention + six days' C.B.
(*c*) Private D, absent ten days, and returning to camp deficient of a tunic—twenty-eight days' detention.

(*a*) This award should be written in hours. *K.R. 494 (ii.)*

(*b*) When detention exceeds seven days a minor award cannot be added. *K.R. 494 (i.)*

(*c*) This punishment is correct. He is awarded twenty-eight days for loss of his tunic, should be placed under stoppages. He forfeits ten days' pay by Royal warrant. *K.R. 493 Act 138*

*Q.* Define the term C.O., as mentioned in Rules of Procedure.

*A.* The expression Commanding Officer, as used in regard to a commanding officer's powers, means, in relation to any person, the officer whose duty it is, under regulations or the custom of the Service, to deal with a charge by himself, or refer it to a superior officer. As applied to squadron or company commanders, so far as it allows him to fine a soldier, or deal with cases of absence without leave. *R.P. 129*

*Q.* When a C.O. awards detention, when does it commence ? Can a C.O. alter his punishment ?

*A.* When a punishment is awarded in days it counts from the day of the award, but if awarded in hours, it commences when the soldier is received into detention barracks; if not received into custody upon the day of the award, then on the next day at the hour for commitment of soldiers into detention. *R.P. 6 R.P. 6 (b).*

The C.O. can alter any punishment he has awarded a soldier before it has been completed by decreasing it, but cannot increase it.

*Q.* If a C.O. awards a soldier an excessive or illegal punishment, can it be expunged from the man's conduct sheet ? *K.R. 507 Act 46 note*

*A.* By order of an officer not below the rank of brigadier-general within two years of the date of the award, otherwise refer to the Army Council.

*Q.* Explain different ways a C.O. can deal with N.C.O.s and men for the offence of drunkenness.

*A.* 1. The C.O. shall fine soldiers according to scale. *K.R. 512*

2. For the fifth or subsequent offence within the preceding twelve months, fine and award detention to the soldier, or try him by court-martial. *Act 46 K.R. 509*

3. Award detention in lieu of a fine, *i.e.*, if his unpaid fines are 20s. or over he substitutes detention for a fine. *K.R. 512*

4. A C.O. can send a N.C.O. for trial by court-martial for any case of drunkenness. *Act 18. M.L. Ch. iv. par. 3*

*Q.* Define the terms, Drunkenness on duty, The line of march.

*A.* Drunkenness on duty includes drunkenness on parade or on the line of march. *K.R. 510*

The line of march is deemed to commence from the time a soldier parades to march from a place until he arrives at the end of the march and the parade has been dismissed.

*Q.* When can a C.O. send a soldier to trial on a charge of drunkenness ?

*A.* 1. If the soldier demands a court-martial instead of submitting to his C.O.'s award. *Act 46 R.P. 7*

2. If it is the fifth or subsequent offence within the preceding twelve months. *Act 46*

3. Drink on active service, on duty, or drunk after having been warned for duty, or drunk when wanted for duty. *K.R. 509 M.L. Ch. iii. par. 2*

*Q.* Suppose a soldier who was drunk committed a serious offence, say, struck a N.C.O., would the C.O. prefer a second charge against the man if he applied for a court-martial for striking the N.C.O. ?

*A.* Not unless it was the fifth case of drunkenness against the man within the preceding twelve months. He would impose a fine, or admonish the soldier if not liable to a fine, enter his award in the guard report. The C.O.'s award would hereafter be recorded in the soldier's conduct sheet and bracketed with the court-martial sentence. *Act 46 K.R. 512 K.R. 511*

*Q.* State what you know regarding the summary of evidence. To whom are copies given ?

*A.* The summary of evidence is the written statement (taken down by an officer) of the witnesses who gave evidence against the accused when the C.O. investigated the case ; it is not taken on oath, but the accused and witnesses against him must be present. The evidence of each witness is read over to him and he signs it. The accused can cross-examine any witness. *M.L., Ch. iv. par. 27 29 R.P. 4, 5*

The accused may make a statement, but shall be warned it can be used against him. *Ch. iv. par. 26*

The officer who takes the summary of evidence shall not cross-examine the accused on any statement he makes in the summary of evidence. *Ch. vi. par. 27 new*

The accused, the president, and the prosecutor are given a copy, and one is sent to the convening officer.

*Q.* What points should the C.O. consider when he receives the summary of evidence ? *M.L. Ch. iv. par. 2*

*A.* 1. Satisfy himself the evidence given by witnesses when he investigated the case coincides with their statements in the summary of evidence.

2. The matter being taken down in writing may alter the case and enable it to deal with it. *R.P. 5*

*Q.* What use is the summary of evidence to the prosecutor, the president, or the accused ? *M.L. Ch. iv. par. 30*

*A.* It enables the prosecutor to prepare his case, the president to study the evidence against the accused, and during the trial to see that the witnesses adhere to their statements contained in the summary of evidence. The accused, should the president omit doing so, could call his attention to the fact that the witnesses' statements are inconsistent with the summary of evidence. The soldier is enabled to see how to prepare his defence when he receives the summary of evidence.

*Q.* What documents does a C.O. forward when he applies for a court-martial, and what eventually becomes of them ? *M.L. p. 604*

*A.* 1. Duplicate charge sheet, one copy sent to president.

2. The summary of evidence and when a general court-martial is held in the United Kingdom, these documents are sent to the judge-advocate-general.

3. Regiment, squadron or battery conduct sheet returned to officer commanding unit. *K.R. 1916*

4. List of all witnesses required, with their present addresses, returned to officer commanding unit. *M.L. Ch. v. par. 27*

5. Statement of particulars of service of the accused, *A.F.B. 296.*

6. Name of the officer who investigated the case.

7. Notified if a court of inquiry on the case had been held, if so where.

*Q.* Explain how a soldier is warned for trial and his privileges. *R.P. 14*

*A.* 1. He must be given at least twenty-four hours' notice in case of a general court-martial or district court-martial, and eighteen for a regimental court-martial. *R.P. 15*

2. An officer warns the accused personally, gives him a copy of the charge or charges, and if necessary explains the matter; also provides him with the summary of evidence. Informs him time, date, place of trial, names of the officers of the proposed court, and who is judge-advocate ; asked for the names of his witnesses who are ordered to attend. *R.P. 101* *R.P. 15*

Told if he is to be tried with others, and if he gives evidence himself at the court-martial, and in so doing gives evidence against men tried with him, he will be liable to be cross-examined as to character.

*Q.* Comment on the following punishments awarded by a commanding officer :—

Private A, absent from picquet duty—seven days' detention.
Private B, absent from parade—eight days' detention and six days' C.B.
Private C, ten minutes late for tattoo—severely reprimanded.
Private D, sixteen days absent—seventeen days' detention.
Sergeant-major E, drunk on parade—severely reprimanded.
Corporal F, drunk in barracks—fined 5s. and ten days' C.B.
Private G, absent off furlough for one day—fifteen days' C.B.
Lance-sergeant H, absent from signalling class—revert to corporal.

*A.* Private A—Terms of detention should be awarded up to seven days in hours, over that, in days. *K.R. 494 (ii.)*

Private B—When detention exceeds seven days a minor punishment cannot be awarded. *K.R. 494 (i.)*

Private C—Reprimand or severe reprimand applies only to N.C.O.s. *Act 46 K.R. 499*

Private D—When absence exceeds seven days, the C.O. shall not award more detention than the number of days the soldier was absent. *K.R. 493*

Sergeant-major E—The C.O. cannot punish a warrant officer. *Act 182*

Corporal F—A C.O. cannot fine a N.C.O. or award him a minor punishment. *K.R. 499*

Private G—A C.O. cannot award more than fourteen days' C.B. as a single award. *K.R. 493 (iv.)*

Lance-sergeant H—The C.O. can order a N.C.O. not above the rank to revert to his permanent grade. *K.R. 499*

## THE CONDUCT SHEET.

*Q.* Give a list of punishments which are recorded in the regimental conduct sheet. *K.R. 1916*

*A.* 1. Conviction by sentence of courts-martial.

2. Cases where a soldier confesses the crimes of desertion or fraudulent enlistment when trial has been dispensed with by competent military authority. *Act 73*

3. Conviction by a civil court, even when the accused is bound over to come to judgment if wanted, or when fined by civil court, unless the brigadier-general orders no record.

4. Punishment on board H.M. ships. *M.L., p. 607*

5. Punishment awarded by visitors to military prisons or detention barracks or civil prison.

6. Offences under Section vi., Reserve Forces Act.

7. Cases of men admitted to hospital on account of alcoholism.

8. All terms of detention awarded by C.O. and all fines for drunkenness.

9. Confinement to barracks over seven days.

10. Forfeiture of pay by Royal warrant except when absence without leave does not exceed two days.

11. Severe reprimand by C.O. of a N.C.O. and reduction to a lower grade, or to the ranks, or loss of lance stripe except for inefficiency. *Act 46 note K.R. 493 (vi.). Act 183*

12. Every case in which a soldier has been bound over by a civil court of ordinary criminal jurisdiction, or a court of summary jurisdiction to appear for conviction or judgment. *New A.O. 106 1910*

If the C.O. considers a regimental entry should not be made, he represents the case to an officer not below the rank of brigadier-general.

If an entry is made, a certified copy of the order is attached to the soldier's regimental conduct sheet.

*Q.* What is done with— *K.R. 1*

(*a*) the regimental, (*b*) the company conduct sheet when a unit proceeds on active service. *K.R. 1919*

*A.* When a unit proceeds on active service all regimental conduct sheets will be forwarded to the officer i/c records concerned, by whom they will be kept up from periodical returns forwarded from the unit in the field through the base record office. *1923*

When a unit proceeds on active service the company conduct sheets will be left at the base record office. They will then be kept up from periodical returns furnished by the unit in the field. After the completion of the company sheets, these returns will be forwarded to the officer i/c records concerned for the completion of the regimental sheets.

The above return is compiled from entries made by the unit in the field in the captain's pocket book. See para. 1924.

ARMY ORDER 323 OF 1912. KING'S REGULATIONS—PARA. 1749. —

*Add to Page 29.*

An entry in a soldier's regimental conduct sheet of gallant or distinguished conduct will be considered as diminishing by one the number of entries referred to in (ii.) (*a*) of para. 1749, K. R., but will not affect the soldier's eligibility or ineligibility for the medal in other respects.

ARMY ORDER 293 OF 1912. KING'S REGULATIONS—PARA. 419.

*Add to page 29 as a separate note.*

Eligibility for an exemplary character once attained under the provisions of this table will not be forfeited unless and until a regimental entry is incurred subsequent to the date of the attainment of such eligibility.

The President of a Court-martial must be named in the order convening the Court. The members and waiting members may be mentioned by name or the number and rank of unit to which they belong may alone be mentioned.

# CHAPTER IV

**The Convening Officer—Jurisdiction of Courts-martial—Judge-Advocate—Ordering witnesses to attend at Court-martial—The President—The Prosecutor—The Governor of a Colony Convening (*vide Chap. vii. of this book*) and Confirming Courts-martial.**

## COURTS-MARTIAL. MILITARY LAW, Chap. v., 583. KING'S REGULATIONS, 547.

*Q.* Give an outline of the contents of the order convening a court-martial. *M.L. p. 558*

*A.* (*a*) The name of the officer who orders the court to assemble is stated, also date, place of assembly, and the description of the court.

(*b*) The president, judge-advocate, and the person to be tried are stated by name, usually the rank of and the number of officers each corps will furnish to compose the court. *Act 47* *Act 48*

(*c*) It is stated all witnesses shall be ordered to attend, and any special matters, such as officers of different corps are not available, or the president is not of the required rank, also wanting members. *Act 50* *R.P. 19* *note A.*

*Q.* Explain how the jurisdiction of a court-martial is affected?

*A.* (*a*) By the place where the offence was committed.

(*b*) By the time that has elapsed since the offence was committed, and the date of the trial.

(*c*) If a soldier has been convicted by the civil powers.

A soldier can be removed from the place where he committed the offence to another station, but owing to the expense of moving the witnesses, it should be avoided. The officer commanding the station to which the accused is moved would convene the court. *Act 159* *K.R. 570*

(*a*) The accused shall not be tried for any offence if three years have elapsed since it was committed. *Act 158* *Act 161*

(*b*) There is no time limit for mutiny, or desertion on active service; fraudulent enlistment, and desertion cannot be tried if the soldier has served three years continuously in an exemplary manner, *i.e.*, no record in the regimental conduct sheet; and a person who commits an offence must be tried within three months of his ceasing to be subject to military law, *e.g.*, on 10th April, 1909, an officer, when subject to military law, committed an offence and left the Army on 15th April, 1910, it was not discovered until 20th July, 1910, therefore he could not be tried.

*Q.* Within what time should a member of the Territorial or Yeomanry Forces be brought to trial after ceasing to be subject to military law? *Act 158*

*A.* Within three months of such change of status.

EMO.

*ld to page* 31, *under heading* "*Convening Officer*," *after* 2.

It has been brought to the notice of the Army Council that ommandants and Superintendents of detention barracks have en detailed to act as President or members of a Court-martial. he Army Council are of opinion that it is undesirable that an ficer, in view of his carrying out the sentence awarded should be pointed either President or member of a Court-martial detailed try a soldier.

Page 31.—*After* line 25 *insert* "The War Office have notified *W.O. Memo.* it cases have been brought to notice in which soldiers, on ing arrested when drunk, have struck N.C.O.s of the litary Police, and have, in consequence, been brought to al by court-martial, under Section 8, Army Act. The con- ning officer will consider, under the circumstances, whether is necessary or expedient to charge the soldier with the ave offence of striking his superior officer, or whether the terests of discipline would be sufficiently safe-guarded by harging the accused with the less serious offences mentioned Sections 10 (2) and 10 (3), Army Act."

*Q.* What authorities can convene the various courts-martial? *M.L.*

*A.* A regimental court-martial can be convened by an officer commanding a corps, or mixed corps, if his rank is not below captain. *Ch. v. par. 17 Act 47 (4)*

A district court-martial can be convened by an officer who can convene a general court-martial, or by an officer empowered by that officer to do so, not below the rank of captain. *M.L. Act 123*

A general court-martial, convened by His Majesty or an officer authorized by him to convene such a court. Abroad such officer can delegate his power to convene, but not in the United Kingdom. In extreme cases abroad a captain could convene a general court-martial. *M.L. Ch. v. pars. 22-22. Act 122. M.L. p. 599.*

*Q.* Can the C.O. of the accused, who has investigated the case or remanded the accused for trial, convene a court-martial for his trial? *A.O.153, 1910*

*A.* No, except in the case of a regimental court-martial. Otherwise he must refer the case to superior authority.

## THE CONVENING OFFICER, Act 122, 123.

*Q.* Give an outline of the responsibilities of the convening officer. *R.P. 17*

*A.* 1. He examines the charge or charges and considers by the summary of evidence if it is a fit case to send to trial by court-martial, and if he can strike out any charges he thinks advisable. *R.P. 48 (b) M.L. p. 558*

2. He details the president by name, decides on the description of the court; and in the United Kingdom he submits the charge sheet and the summary of evidence to the judge-advocate-general if the case is to be tried by general court-martial.

## JUDGE-ADVOCATE.

*Q.* When is a judge-advocate appointed to attend a court-martial? Can a court-martial proceed without one? Give an outline of his responsibilities. *R.P.101 M.L. p. 599*

*A.* He is always appointed to attend a general court-martial and may be appointed for a district court-martial. Once a judge-advocate has been appointed a court cannot proceed till he returns or a fresh officer is ordered to replace him. He is appointed by the convening officer, who has power to do so by the warrant he holds to convene a court-martial. *R.P.103*

The judge-advocate must be strictly impartial. He will give his opinions on points of law, whether in or out of court, and the accused, prosecutor or president can consult him. If the court decline to take his advice he can demand the fact to be recorded in the proceedings of the court-martial. He is equally responsible with the president to assist the accused in examining or cross-examining witnesses.

*Q.* When would the convening officer order the accused to be tried?

(*a*) On separate charge sheets.

(*b*) When are alternative charges used, and what is the procedure of the court in such cases? *R.P. 62*

*A.* Most cases brought before a court-martial are so simple that the

accused is not embarrassed by being tried on several charges at the same time, but some cases are complicated, *e.g.*, when the offences the soldier is charged with were committed at different times or when a different set of witnesses is required.

*E.g.* A soldier is drunk, he knocks down a corporal, uses insubordinate language to a superior officer, and runs away, and may be guilty of absence or desertion. Such a case would involve separate charge sheets; this keeps each case distinct as to the evidence, and enables the court and the accused to follow the evidence more distinctly. *Act 19* *Act 9* *Act 12* *Act 15*

The court try the accused separately on each charge up to and including the finding, but the convening officer may direct, if the court find the accused guilty of an offence involving the greatest punishment, to omit trying the man on other charges. *R.P. 6*

*Q.* By whom and how are witnesses ordered to attend a court-martial. *K.R.57*

(*a*) Persons subject to military law. *R.P. 7*

(*b*) Civilians.

And what follows if, having been duly warned, a witness fails to attend?

*A.* The convening officer, or after the assembly of the court, the president, can order the attendance of the witnesses for the prosecution or for the accused if within reason.

Civilians, by the convening officer, president, C.O. of the accused, or the judge-advocate.

When a military witness is not serving in the place where the court is to be held and he is required as a witness at a court-martial, application is made to the brigade commander, or other officer commanding where the witness is serving.

A civilian is served with a summons personally, tendered his legal expenses, and ordered to bring any documents required on assembly of the court. The president takes on oath evidence from the person who summoned him that he did so and at the time tendered him legal expenses. The president notifies to the convening officer the fact of the absence, and he takes steps to have the man dealt with by civil law. *Act 126* *M.L. p. 580*

If a military witness is absent he could be dealt with for contempt of court, or for disobedience of orders. *Act 28*

## DUTY OF PROSECUTOR.

*Q.* State what you know regarding the prosecutor at a court-martial.

*A.* Prove his case by sworn evidence and make addresses when requisite. *R.P. 6*

Re-examine his own witnesses for the prosecution. *R.P. 8*

Objection on prisoner's part to be punished by his C.O., and that he appealed for a district court-martial; this fact is told to court by prosecutor. *M.L. p. 563*

See equally with president the prisoner gets a fair trial. *K.R. 575*

Examines his witnesses either by questions or asks them to make a statement regarding what they know. *R.P. 84*

Cross-examine witnesses called by the prisoner.

Unfavourable evidence against prisoner can be brought forward provided it is relevant, but special care being taken not to withhold any evidence that would tell in prisoner's favour, or show he received provocation. *R.P. 60*

The prosecutor shall not call notice of the court to the fact the prisoner did not call his wife to give evidence or do so himself, but the prosecutor may point out if the prisoner gave evidence after hearing the evidence given by witnesses he called in his defence. *R.P. 40 (b)* *R.P. 41 note*

If by reason of the nature of service of a prisoner in a departmental corps, the finding of the court renders him liable to any punishment in addition to that awarded by the court-martial, it will be the duty of prosecutor to call the attention of the court-martial to it. *M.L. p. 570*

Tells court if the prisoner was drunk when he committed the offence, if he is not charged with drunkenness. *K.R. 575*

Extracts the credibility of the prisoner's witnesses by means of cross-examination.

## DUTIES OF PRESIDENT.

*Q.* State what you know regarding the responsibilities of the president of a court-martial.

*A.* Procures the attendance of witnesses he thinks essential to attend after trial has commenced. *R.P.78*

Records the proceedings in a legible manner or gets a member to do so, initials mistakes, and recalls witnesses when necessary, and collects votes. *R.P. 43* *M.L.(v.) par. 78*

Equality of votes on the findings, he has no casting vote; the court acquit the prisoner in this case, but after court has been sworn, in all other cases he has a second vote. *A.A. 53 (7)*

Swears the members of the court (if no judge-advocate present) and officers under instruction. *R.P. 26 (ii.) M.L. (v.) 46.*

Interpolated questions or extra questions may be put through him to persons subject to military law, and for contempt of court can give twenty-one days' detention. *Act 28*

Transmit proceedings after he signs them to proper authorities with a covering letter. *R.P. 50* *M.L. 5*

## CHAPTER V

The Rank of Officers composing the various Courts-martial—Offenders and Offences a Court-martial can try—Officers Ineligible and Disqualified to sit on a Court-martial—Preparing Charges to be laid before a Court-martial—The Procedure of a Court-martial from the time it assembles till the Court closes to consider its Finding (including the Prisoner's Defence)—*M.L., page 560 to 573.*

### COURTS-MARTIAL. MANUAL LAW, pages 561-573.

*Q.* With regard to courts-martial state what you know regarding (*a*) the rank of the president; (*b*) composition and number of members requisite for each court; (*c*) required service of members.

*A. Regimental court martial.*—The president of the court should be a captain unless (1) on board ship; (2) the line of march; (3) where with due regard to the public service a captain is not available, such to be stated in the order convening the court. *Act 47*

*District court-martial.*—A field officer, but in very extreme cases a subaltern could sit as president unless the accused is a warrant officer. *Act 48* *Act 18* *(9) K.R. 55*

*General court-martial.*—A general or a colonel, but in extreme cases a captain could be appointed. *K.R.57* *Act 48*

*Regimental court-martial.*—As a rule the members belong to the same corps as the accused, and must have at least one year's commissioned service. *Act 47* *Act 48* *R.P. 1*

*District court-martial consists* usually of three officers, a field officer, captain and subaltern, but may consist of five officers; service required, at least two years. The members should if possible belong to different corps. The convening officer can detail officers belonging all to the same unit, but shall record in the proceedings if other officers are not available. If the convening officer belongs to the same regiment or corps as the accused, he records the fact in the order convening the court that it was impossible to obtain officers of different corps within a reasonable time. *M.L. p. 558* *K.R. 576* *R.P. 1* *R.P. 2* *Act 48*

*General Court-martial consists* of at least nine members in the United Kingdom, Malta, Gibraltar, and India, elsewhere five. As regards the corps. same rule applies as to district court-martial. Five members shall not be below the rank of captain; officers must have at least three years' commissioned service. More officers are detailed, usually eleven or thirteen, in case of death, or from any other cause the court, during its sitting, might be reduced below the legal minimum. *Act 48* *M.L. p. 558* *R.P. 1*

*Q.* How is the composition of the court affected if the accused is (*a*) commanding officer; (*b*) field officer; (*c*) a warrant officer; (*d*) a Territorial or Yeoman?

Page 35.—*Delete* paragraph lines 8 to 11 and *substitute* *A.O.*263 1910. *R.P.* 20 (B).

(d) If the accused belongs to the Special Reserve, one member of the court must, if practicable, be an officer belonging to the Special Reserve of Officers; or, if the accused belongs to the Territorial Force, one member of the court must, if possible, belong to the Territorial Force. If an officer of the Special Reserve of Officers or of the Territorial Force, respectively, is not available, the convening officer must state in the order convening the court that such is his opinion.

An officer of the regular forces who is adjutant of a Special Reserve unit, or of a unit of the Territorial Force is not considered to be an officer of the Special Reserve or of the Territorial Force, as the case may be, for this rule."

*A.* If the accused is (*a*) C.O. as many members as possible should be commanding officers or have held similar commands to the accused; and on the trial of officers the members in all cases should be of equal if not superior rank to the accused. *R.P. 21*

(*b*) A subaltern cannot sit on the trial of a field officer, (*c*) a subaltern cannot sit as president of a district court-martial if the accused is a warrant officer. *Act 182*

(*d*) When the accused is a Territorial or Yeoman if possible one member of the court at least should belong to the same branch of the Auxiliary Forces as the accused. The adjutant of Auxiliary Forces may be appointed if others not available. *New Act 178 R.P. 19 note.*

*Q.* What offenders and what offences may be tried by the various courts-martial, and what rules are laid down as to the days and hours of the sitting of a court-martial? *M.L. Ch. v. par. 4*

*A.* (1) Officers must be tried by general court-martial, and very serious crimes, such as those liable to punishment of death or penal servitude. *K.R. 552*

2. District court-martial can try most serious offences, but for very aggravated offences, for men of bad character, or where, for the sake of discipline, a serious example is expedient, it is better to resort to the general court-martial. District court-martial can try all offenders except officers. *M.L. Ch. v. par. 3 Act 47*

3. Regimental court-martial try, as a rule, persons not above rank of corporal and offences of a light character. *K.R. 438*

4. Courts-martial usually sit between 10 a.m. and 4 p.m. in the United Kingdom, abroad hours suitable to climatic conditions. If a court continues sitting after six o'clock p.m. the reasons for doing so are recorded in the proceeding. If possible a court should not sit for more than six hours, or the most eight hours, in one day. This duty should be avoided on Christmas Day, Good Friday, and Sunday. *K.R. 579 R.P. 64*

*Q.* Explain "Ineligible," "Disqualified to sit as a member of a court-martial."

*A.* An officer is ineligible to sit on a court-martial if he has not the required service, *i.e.*, three years for a general court-martial. *R.P. 19 Act 48*

If he is not of the required rank, *e.g.*, a subaltern, cannot sit on the trial of a field officer. A person who is an officer not subject to military law cannot sit on courts-martial. An officer who has been C.O. of the accused at any time between the date of the commission of the offence and the date of the trial inclusive, irrespective of the fact he did not deal with the case at issue. *R.P. 21 new*

*Disqualified.*—The C.O. of the accused, or an officer who investigated the case when acting as C.O. in the absence of the C.O., the squadron, battery or company commander who investigated the case. The officer who took the summary of evidence, or any officer who sat on a court of inquiry which investigated the case before it went before a court-martial. An officer who has a personal interest in the case, or who has expressed himself prejudiced against the accused. *R.P. 19*

*Q.* Comment on the composition of the court-martial as under :—

A general court-martial held at Aldershot for the trial of Major Blue, 23rd Dragoons.

*President :*

Major-General A.

*Members :*

| | |
|---|---|
| Colonel B .. .. .. .. | 23rd Dragoons. |
| Colonel C .. .. .. .. | R.E. |
| Lieut.-Colonel D .. .. .. | R.F.A. |
| Major E .. .. .. .. | R. Fusiliers. |
| Major F .. .. .. .. | R.I. Rifles. |
| Captain H .. .. .. .. | G. Guards. |
| Lieut. I .. .. .. .. | 17th Lancers. |

*A.* 1. Colonel B is disqualified because he is the C.O. of the accused. *R.P.19*

2. The court should have at least nine members if held in the United Kingdom. *Act 483*

3. A subaltern cannot sit on the trial of a field officer. *R.P. 21 (b)*

4. Officers sitting on a court-martial should if possible be of equal if not superior rank to the accused. Therefore the captain should not sit, if possible, as a member. *R.P. 21 (b)*

## PREPARING THE CHARGE FOR A COURT-MARTIAL.

*Q.* What do you understand by a charge ? And describe the contents of a charge sheet.

*A.* A charge means a person, amenable to military law, has committed an offence.

The charge sheet begins with the regimental number, rank, name, and states the corps to which the accused belongs ; and also if he is a soldier of the Regular or Auxiliary Forces, and in the latter case states if he is subject to military law. *R.P.9 to R.P. 12 M.L. p. 543*

A charge is divided into two parts :—

1. The statement of the offence in the words of the Army Act. *R.P. 10*
2. The particulars of the offence, *i.e.*, date, place where the offence was committed, and the time.
3. Civil offences are described as such and charges framed under *Act 41.* *M.L. p. 556*

## PROCEDURE OF COURT-MARTIAL FROM ASSEMBLY TO THE FINDING.

Procedure to be observed during a trial by court-martial, with variations that might occur. *M.L. p. 561*

*Q.* What documents are laid before the court when it assembles ?

*A.* The order convening the court, the summary of evidence and charge sheet, a certificate of health of the accused signed by the medical officer.

*Q.* Describe the procedure of the court from the time it opens until the accused is asked to plead. *R.P. 24*

*A.* 1. The court satisfy themselves as required by Rules of Procedure 22 and 23. *R.P. 27*

2. The order of assembly for the court is read and marked. *R.P. 37*

3. The president asks the accused if he objects to be tried by him as president or any of the officers whose names he has heard read. *R.P. 38*

4. The court is duly sworn, and the charge is read in the hearing of the accused and all witnesses. The witnesses then withdraw from the court and the accused is asked to plead as to guilt or innocence. The president signs the order and attaches it to the proceedings.

*Q.* To what person cannot the accused object to ?

*A.* The prosecutor, judge-advocate, or members under instruction, because they do not form part of the court. *R.P. 25(b).*

*Q.* What happens if the accused objects—

(*a*) to the president and one member of the council ; *R.P. 25*

(*b*) to two or more members of the court ;

(*c*) to all members.

*A.* The objection to the president is first taken. The accused states his reasons and brings evidence if he can to support it, and the members vote. One-third of the votes displaces the president ; if unsuccessful in the objection, the objection is next taken about the member. If the president retires the convening officer can appoint a new president with the accused's right to object to him ; or he can appoint the senior member president if the court is not below the legal minimum and the officer is of the required rank. *R.P. 18* *R.P. 25* *Act 51* *R.P. 51* *R.P. 25* *Note B.* *R.P. 53 (2)*

If members only are objected to the case is voted upon and the objection to the junior is first taken. If the court is not reduced below the legal minimum it usually proceeds with the trial ; but if reduced below that requirement the convening officer can add a new member to the court. *Act 51*

The accused shall be told he cannot object to the whole court ; if he persists in so doing, the case of the president is first taken, and then from the junior member upwards, in the usual manner. *R.P. Note A.*

*Q.* What would be a valid plea of objection to any member of the court ? *R.P. 19*

*A.* That an officer was disqualified or ineligible to sit on the court, had a personal interest in the case, or had expressed an opinion hostile to the accused bearing on the trial.

*Q.* Who informs the court that the accused is tried by court-martial at his own request instead of submitting to this C.O.'s award ? *M.L. p. 563*

*A.* The prosecutor.

*Q.* When may several persons be tried jointly ?

*A.* Certain offences, such as mutiny, entail a joint trial ; otherwise any one of the accused persons may claim a separate trial when the prosecutor warns him he is to be tried, or if not then before the court *Act 7* *R.P. 15* *M.L.*

is sworn, on the ground he requires any of those accused of the same offence to give evidence on his behalf; but once a court has been sworn persons tried jointly are incompetent to give evidence on behalf of one another. *Ch. vi par. 84*

*Q.* What is the procedure of the court when persons are tried collectively ?

*A.* Each one of the accused is allowed to object to the court. The court record a separate plea as to the guilt or innocence of each, and a separate defence, finding and sentence, and, if necessary, a separate recommendation to mercy. The evidence and addresses of all persons implicated is taken and the prosecutor make only one address in reply. *R.P. 49* *R.P. 61*

*Q.* When might the accused raise the following pleas at a court-martial :—

(*a*) A plea in bar of trial.

(*b*) An objection to the charge.

(*c*) An objection to the jurisdiction of the court.

*A.* (*a*) A plea in bar of trial could be raised, that the accused was punished by a civil or military court, or acquitted by either; or punished or pardoned by his C.O. *R.P. 36*

That his offence was condoned by competent military authority.

That three years have elapsed since the offence had been committed. *Act 161*

(*b*) The charge is not valid because it does not disclose an offence under the Army Act, and it is not framed in accordance with the Rules of Procedure. *R.P. 32*

(*c*) Special plea to the jurisdiction of the court, viz., the accused is not subject to military law; there are not sufficient officers to form the court; the accused is not amenable to the jurisdiction of the court, *e.g.*, a warrant officer could not be tried by regimental court-martial. *R.P. 34* *Note A.* *Act 48* *Act 182* *R.P. 21*

The court is improperly constituted, *e.g.*, a subaltern if detailed to sit on the trial of a field officer.

*Q.* What courses are open to the president if the charge before the court is found to be defective ? *R.P. 12*

*A.* A mistake in the name of the accused person can be amended if it is clear to the court that the accused is the person intended to be tried, and he suffers no injustice. If the charge requires any additional facts to be stated, or any alteration as to any omission from it or otherwise, and when the charge does not disclose an offence under the Army Act, the president adjourns and consults the convening officer, because that officer is responsible the charge is correct, and he alone can alter it. After the court has been sworn it may be enabled to record a special finding. *R.P. 33* *R.P. 44* *Act 56* *M.L. p. 572*

*Q.* Describe how the members of a court-martial are sworn and the various obligations undertaken by members who take oath.

*A.* 1. If a judge-advocate is present he administers the oath to *R.P. 26*

the members of the court. The president then administers the oath to him.

2. If there is no judge-advocate the members of the court are sworn in by the president, who is then sworn in by a member of the court, usually the senior officer.

3. (*a*) Members are sworn to try the accused according to the evidence brought before them, and to act impartially. *Act 52*

(*b*) Not to disclose the sentence of the court till it is duly confirmed.

(*c*) Never to disclose how any member recorded his vote, unless required to give evidence before a court of law, or whether the decision of the court was unanimous or by a majority.

*Q.* Explain the procedure at a court-martial when the accused pleads guilty to the charge. *R.P. 37*

*A.* Before recording a plea of guilty the president shall see that the accused understands the meaning of the charge; for example, a soldier being tried for desertion, pleads guilty, but states he intended to come back. The president would advise him to plead not guilty, as the intention of coming back would tend to prove him not guilty of desertion; also explain that by pleading guilty the accused can only call witnesses as to character. If the accused then pleads guilty, the president reads the summary of evidence and attaches it to the proceedings, and the accused then can make any statement in mitigation of punishment, and call any witnesses as to character. *M.L. Ch. iii, par. 18*

*Q.* How does the court act if the prisoner pleads guilty to, say, the first charge, and not guilty to the second charge, when not tried on alternative charges.

*A.* When the accused pleads guilty to one charge and not guilty to another, the court proceed to try him first on the charge he pleads not guilty to, and take evidence, and on such evidence record the finding on the charge.

Then having cautioned him in the manner above as to the charge he pleads guilty to, he is recorded guilty of that charge.

*Q.* At a court-martial the accused refuses to plead to a charge, or does so in an unintelligent manner, what happens? *R.P. 35 (a).*

*A.* A plea of not guilty is recorded.

*Q.* If a soldier pleads—

(*a*) Guilty to two alternative charges; or

(*b*) When tried on alternative charges pleads guilty to the charge which on conviction entails the less severe punishment under the Army Act, what is the procedure? Give examples.

*A.* (*a*) When the accused is tried on alternative charges which on conviction entail the same punishment, he shall be informed he cannot do so, *e.g.*— *Act 24*

First charge:—Making away with by pawning one pair of boots.

Alternative charge :—Losing by neglect one pair of boots.

(*b*) But if he pleads guilty to an alternative charge which on conviction entails a less severe punishment, the court hear all the evidence and decide on which charge he is guilty, *e.g.*—

Sergeant A is charged with embezzlement of £10—liable to penal servitude on conviction. *Act 17*

Alternative charge :—An act to the prejudice of good order and military discipline, being deficient of £10. *Act 40*

*Q.* Explain how a witness is examined at a court-martial from the time he enters the court until he withdraws ? *R.P. 30*

*A.* Each witness is sworn according to his religious belief; no other witnesses should be present in court. The witness is examined by the prosecutor, or asked to make a statement regarding the case. The accused can cross-examine any of the prosecutor's witnesses. *R.P. 81* *R.P. 82* *R.P. 83* *M.L. p. 585*

The prosecutor can re-examine the witness. The evidence of each witness is read over to him by the president.

The accused can then call his witnesses and examine each of them. The prosecutor cross-examines each witness. The accused re-examines, and the procedure followed after this is the same as in former case of examination for the prosecutor.

*Q.* Is the prosecutor bound to call the witnesses whose names are contained in the summary of evidence ? Can he call a witness whose name is not contained therein ?

*A.* The accused can demand a witness who is not produced by the prosecutor, if his name is contained in the summary of evidence, as such a witness might be held back because although for the prosecution his evidence might favour the accused. *R.P. 75*

If the prosecutor calls a witness whose name is not in the summary of evidence, if notice has not been given within a reasonable time to the accused, he can demand time to prepare his case to meet this unforeseen evidence, and the court may proceed to take the evidence of others. *R.P. 76*

*Q.* Define the terms, Counsel, Legal Adviser, and their privileges, and how is the status of an officer affected when he appears as the prisoner's friend. *R.P. 93* *R.P. 87*

*A.* Counsel includes a barrister of England and Ireland, or a solicitor and a law agent or advocate of Scotland.

Legal adviser, barristers, solicitors, and their clerks and interpreters between them and their clients, and any person assisting the accused at a court-martial. A solicitor or law agent has the same rights as counsel, that is to say, he can examine, cross-examine witnesses and address the court. The same rule applies to an officer who is acting as the friend of the accused, if he is subject to military law. An officer not subject to military law or a civilian who is not counsel has none of the above privileges ; he can only advise the accused on points of law, or suggest questions to be put to witnesses. When counsel is employed seven days' notice must be given by whichever side employs him, and if employed in the United Kingdom by the *M.L. Ch. vi. par. 101* *R.P. 87* *R.P. 89* *K.R. 574* *Ap. viii.*

prosecution the sanction of the Army Council. A general officer in command may engage counsel and report to Army Council.

*Q.* When the accused is defended by counsel, how does it affect the accused, as to his rights to address the court, by making a statement ?

*A.* If the accused is defended by counsel, or by an officer subject to military law who, by virtue of his status, has the rights of counsel, he can make a statement on the subject of the charge (provided he does so before either of the above address the court), either verbally or in writing. Such evidence is not on oath, and the accused cannot be questioned on it, but if he makes a statement, he cannot give evidence on his own behalf. The accused cannot be compelled to give evidence on his own behalf or to make a statement. *R.P. 94 (b)* *R.P. 43 note*

*Q.* How does a statement differ from a case where the accused gives evidence on his own behalf ?

*A.* It is not on oath, it may be in writing. It is delivered as a consecutive statement, not as a series of answers as to questions ; it is not subject to the rules of evidence or to cross-examination, and is delivered by the accused from where he stands under escort. *M.L. p. 510* *R.P. 94 note*

*Q.* Can the accused give evidence on his own behalf ?

*A.* The accused is not bound to give evidence on his own behalf. If he does so his evidence shall be taken when the prosecution is closed, and before he calls any witnesses in his defence. He should be warned that if he elects to give evidence after his own witnesses, the value of such evidence may be discounted. *R.P. 40* *note* *R.P. 40 (c)* *R.P. 41 note*

*Q.* Can the following persons give evidence at a court-martial :—

(*a*) The prosecutor ; the judge-advocate. *R.P. 39*

(*b*) Can either of the above comment on the fact that the accused did not elect to give evidence on his own behalf, or did so after he heard the evidence of his own witnesses ? *(c)* *R.P. 40* *R.P. 41*

*A.* The prosecutor can give evidence for the prosecution or the defence. Such cases might occur on active service, when the trial could not be postponed, or when he is the only officer available for the duties of prosecutor. His evidence is given before any other witness.

The prosecutor cannot comment on the fact the accused did not elect to give evidence on his own behalf, or call his wife to give evidence for him, but he can if the accused gives evidence after his own witnesses. The judge-advocate can comment on both cases, and can give evidence for defence only. *R.P. 39 (c)* *note* *R.P. 41 note*

*Q.* Suppose a court wish to adjourn to view a place, or to see a person who is unable to attend at court, what is the procedure ? *R.P. 40, 41*

*A.* The court must proceed to see the place or person in a body, together with the accused, prosecutor, judge-advocate and witnesses ; they must not depute a member to go alone. *R.P. 63* *Act 53* *note*

*Q.* Give cases where a court-martial might adjourn and the procedure.

*A.* 1. Absence of the president, a member, or the judge-advocate. *R.P. 79*

2. To consult the convening officer on a point of law. *New*

3. Illness of the accused. To secure the attendance of a necessary witness. *R.P. 65*

When a court-martial adjourns in order to consult the convening officer, its reasons for doing so are to be recorded in the proceedings, and the convening officer's opinion on each point raised clearly stated.

*Q.* Suppose the accused is too seriously ill to attend, or dies. What is done ? *R.P. 67*

*A.* Evidence of the fact is taken on oath and recorded and the fact reported to the convening officer.

*Q.* Can a witness giving evidence at a court-martial refer to his notes or diary ?

*A.* The court may allow him to do so if he swears to the fact the matter referred to was recorded in his notes or diary when they were fresh in his memory, or if they were made by another person, and when read by him they were known to be correct. He must not read his notes to the court as evidence, but merely refresh his memory. The accused can demand the notes or diary are laid before the court for inspection. *M.L. Ch. vi. par. 70*

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**THE DEFENCE. MANUAL OF LAW, page 569.**

*Q.* Upon what circumstances does the value of the accused's defence depend ? Explain the value of the undermentioned pleas raised in defence :—

(*a*) Drunkenness ; (*b*) ignorance of the law ; (*c*) provocation ; (*d*) compulsion.

*A.* The value of the defence depends on the credibility of the evidence of witnesses to support it.

*Drunkenness* is no excuse for crime, because a man might get into that state to work himself up to commit an offence ; but when a person is suffering from delirium tremens a plea of insanity might be raised. *M.L. Ch. vii. par. 10*

*Ignorance of the law* is no defence, *e.g.*, if a foreigner kills an Englishman in a duel in England it is murder, but if he was ignorant of the fact it might mitigate the sentence. *M.L. Ch. vii. par. 13*

*Provocation* is no excuse, but might be considered in mitigation of punishment. *Act 8*

*Compulsion* would be valid, if the act was committed in company with others, and the accused was forced by threat of death. *M.L. Ch. vii. par. 11*

**THE FINDING. MILITARY LAW, page 572.** 692

*Q.* What persons may remain in court when the members are considering their finding ?

*A.* Members of the court, officers under instruction, and the judge-advocate, who may be required to give legal advice ; all these persons are sworn not to divulge certain matters connected with the trial. *Act 52 R.P. 62 R.P. 27*

*Q.* Explain how the court determine the guilt or innocence of the accused. *R.P. 103*

*A.* The president may commence by making a statement of the points to be considered.

The opinion of each member is taken separately on each charge, commencing with the junior officer. *R.P. 43*

Every member must give his opinion, even if he considers the accused not guilty. In case of equality of votes, as the president has not a second or casting vote, the accused is deemed to be acquitted. *R.P. 69*

*Q.* When might a court-martial honourably acquit the accused ?

*A.* When the charge affects his character.

*Q.* When may a court-martial record a special finding when the accused, by reason of insanity, is unfit to undergo his trial ? *R.P. 57*

*A.* Offences tried under circumstances involving a higher degree of punishment, the accused may be found guilty of the offence under circumstances involving a lesser degree of punishment, *e.g.*, a corporal is charged with allowing a person in his custody wilfully to escape. The court might find him guilty of allowing him to escape, but not wilfully. *R.P. 44* *R.P. 20*

When a soldier is charged with an offence on alternative charges and the court consider him guilty, but they are in doubt on which charge they can legally convict him, in such a case the confirming officer decides. *M.L. p. 573*

Certain cognate offences, for example, a soldier tried for

1. Stealing money or property could be found guilty of embezzlement or fraudulently misapplying the same. *R.P. 44*
2. Desertion or attempting to desert—Absence without leave. *Act 46*
3. Embezzlement—Stealing or fraudulently misapplying the same.
4. Attempting to desert—Desertion or absence without leave.

*Q.* In what different ways may a court-martial decide a finding ?

*A.* (1) guilty ; (2) not guilty ; (3) guilty of some charge or charges, and not guilty of others ; (4) acquit the accused honourably.

*Q.* What is the procedure of the court if they acquit the accused of the charge or charges against him ? *R.P. 45* *M.L. p. 573*

*A.* They will pronounce their finding in open court and the accused will be discharged, the president having signed the proceedings, and the judge-advocate if present. *M.L. Ch. v. par. 76.* *K.R. 590*

# CHAPTER VI

Procedure on Conviction—Previous Convictions—Recalling Witnesses—The Sentence—Field Punishment—Military Prisons and Detention Barracks—Loss of Proceedings of Court-martial before Confirmation.

## PROCEDURE ON CONVICTION.

### (a) When the Court records a Finding of Guilty, and the Proceedings before Sentence.

*Q.* When the accused is found guilty of all or any of the charges, how does the court determine his character? *P. R. 46* *M.L. p. 673*

*A.* The court re-opens and the prosecutor appears before it and is duly sworn, and lays the conduct sheet of the accused before the court, and a schedule of convictions by civil or military courts against the accused previous to this trial, if there are any. The prosecutor states they are true extracts from the regimental books, and he identifies the accused as the right man.

*Q.* What do you understand by a previous conviction?

*A.* That the accused was previously tried and found guilty by court-martial, or by a civil court where the sentence exceeded seven days, and the crime was committed since the enlistment of the soldier. *K.R. 1916* *K.R. 1914 (iii.)*

The proceedings of a court of inquiry held in the illegal absence of a soldier (except in the case of an absconding recruit), and in cases where a soldier confesses desertion or fraudulent enlistment and his trial is dispensed with by competent military authority, is equivalent to a previous conviction. *Act 72* *R.P.125* *K.R. 673* *Act 73*

*Q.* Can the accused be given a bad or a good character when being tried by a court-martial? Discuss the value of evidence of good character *v.* evidence of facts.

*A.* Verbal evidence of bad character cannot be given, the court determine character of the accused from the conduct sheet laid before the court. Evidence of good character can be received. *M.L. Ch. vi par. 16*

Evidence of good character cannot avail against evidence of facts, but when doubts exist it may help to mitigate the punishment or the offence, *e.g.*, when a soldier is tried for murder. As malice is the essence of the crime, any acts of kindness towards the deceased by the accused might tend to prove it was a case of manslaughter. Also a character for honesty given to a man charged with theft would carry weight. *M.L. Ch. vi. par. 18*

*Q.* Explain under what conditions a conviction of a person subject to military law can be obtained. *New Act 164*

*A.* Application is made to the clerk of the court, who can supply a copy after the expiration of ten days since conviction, provided it is proved no appeal against such conviction is pending.

**RECALLING WITNESSES.**

*Q.* To what extent can witnesses who have given evidence at a court-martial be recalled for further examination. *R. 86*

*A.* The court, for their own satisfaction, may recall any witness who has previously given evidence before recording the finding.

At the request of the prosecutor the court may allow witnesses to be recalled by him before the accused delivers his second address for the purpose of rebutting any material statement made by a witness in defence of the accused, or on any new matter which the prosecutor could not have reasonably foreseen.

**THE SENTENCE. MILITARY LAW, page 576.**

*Q.* Explain how the court determine the sentence to be awarded to the accused, and the points they consider.

*A.* Each member votes as to the nature of the punishment and then the amount of it, which is determined by an absolute majority. The opinion of the junior member of the court is first taken. In case of equality of votes on the sentence the president has a second or casting vote. A sentence of death requires a majority of two-thirds of the votes. The court consider the gravity of the charge, youth and inexperience of the offender, or if he is a bad character and a hardened offender, the state of discipline in the garrison or corps to which the accused belongs is brought before the notice of the court by the prosecutor. They also consider if provocation was given to the accused, or if the offence was premeditated, and finally the locality and climate where the imprisonment has to be undergone. *R.P. 69* *Act 53* *Act 48 (8)* *M.L. Ch. v. par. 83 note* *M.L. p. 576* *K.R. 583, Act 131*

age 45.—*After* line 26 *insert* "If the accused has elected *A.O.* 164 sed
e tried by district court-martial instead of submitting to 1911.
commanding officer's punishment, the sentence of the *K.R.* ent *R.P. 69*
t-martial should not, under ordinary circumstances, be a 583 (*i*). on-
vier one than the punishment his C.O. had the power to t is
rd." [illegible] The president then puts forward the most lenient, *i.e.*, detention, which is over-ruled. Those voting for it change to imprisonment and those for penal servitude are obliged to vote for imprisonment; the amount is voted on in the same way.

*Q.* Comment on the following sentences passed by court-martial :—

1. Captain A, two years' imprisonment. 2. Sergeant B, 84 days' detention. 3. Sergeant C, severe reprimand. 4. Private D, three months' detention. 5. Private E, two years' penal servitude. 6. Private F, two-and-a-half years' imprisonment.

*A.* 1. The court should sentence an officer to be cashiered before a sentence of imprisonment. *Act 44*

2. A N.C.O. should be reduced to the ranks before a court award a sentence of imprisonment or detention. *Act 183* *M.L. p. 577*

3. A court-martial can only reprimand or severely reprimand officers. *Act 44 (g)*

4. Terms of detention or imprisonment not amounting to six months should be awarded in days. *K.R. 585*

5 and 6. No sentence of penal servitude can be passed for less than three years, or of imprisonment for more than two years. *Act 44* *Act 68*

*Q.* What is the longest term of imprisonment and the shortest term of penal servitude a court-martial can award ?

*A.* Imprisonment, maximum two years ; penal servitude, not less than three years. *Act 68* *Act 44*

*Q.* When should a court-martial award terms of imprisonment or detention, (*a*) in days; (*b*) in years; (*c*) in months or months and days ?

*A.* (*a*) Terms of imprisonment or detention under six months in days, *e.g.*, eighty-four days' imprisonment, or detention. *K.R. 585*

(*b*) Terms of exactly one year or two years in years, *e.g.*, one year's imprisonment.

(*c*) Other terms in months or months and days, *e.g.*, seven months' detention ; thirteen months and fifteen days' imprisonment.

*Q.* Suppose a soldier was tried by a court-martial and sentenced to eighty-four days' imprisonment, and before having completed his original sentence he is tried by another court-martial, how should the second court act ?

*A.* Suppose Private A got eighty-four days and he has completed twenty-one days of it on the day of the second trial, he has sixty-three days to undergo by order of the first court ; say the second court consider forty-two days' imprisonment sufficient to meet the charge they are trying him on, they add sixty-three and forty-two together, and the president writes the sentence one hundred and five days. *K.R. 84* *M.L. p. 577*

*Q.* When is the sentence of a court-martial deemed to commence ?

*A.* From the date the president signed the original proceedings, *e.g.*, a court-martial was held on the 4th April and the proceedings were signed on that date, the court was ordered to re-assemble for revision on the 7th April, and on the 14th April the proceedings were confirmed, the accused's punishment commenced on the 4th April. *Act 68*

*Q.* With what object was detention introduced as a sentence by court-martial. When would a court-martial award imprisonment and also discharge with ignominy ? *K.R. 583* *Act 32*

*A.* Detention was introduced to avoid the stigma attached to imprisonment. For purely military offences it is usual to award detention, especially if the soldier is to rejoin the colours. Imprisonment is awarded to men convicted of serious offences or for grave military offences where it is desirable to discharge a man with ignominy.

*Q.* What rules guide a court-martial as to the amount of sentence it is advisable to pass on offenders for various offences ?

*A.* The King's Regulations lay down in a tabular form the approximate amount of punishment desirable to award, although the Army Act, Sections 4 to 41, show the maximum punishment a court *K.R. 583 (xi.)*

offences" *substitute* "offences which do not warrant discharge." 1911. *K.R.* 583 (*iv.*)

can sentence offenders tried under the various sections of the Army Act.

*Q.* What rules should be observed when a court-martial awards imprisonment to an officer—to an N.C.O. ?

*A.* (*a*) Before sentencing an officer to imprisonment the court shall sentence him to be cashiered. *Act 442*

(*b*) In the case of an N.C.O. he shall be first sentenced to reduction to the ranks and then to imprisonment. *Act 183 (3)*

*Q.* How can the sentence of a court-martial effect the rank of an officer or N.C.O.?

*A.* In the case of an officer, he can be ordered to lose seniority of rank in his regiment or in the Army, *e.g.*, say a captain's commission was dated as such the 1st January, 1908, he might be sentenced to take rank and precedence in his regiment or in the Army as if his captain's commission was dated 1st March, 1910, the date the court sentenced him to such. *M.L. p. 577* *R.P. 47 new Act 44*

An N.C.O. can be reduced to the ranks with or without other punishment, or reduced to a lower grade of N.C.O., or sentenced to take rank and precedence as if his appointment to the rank held by him and specified in the sentence bore some date specified in the sentence and later than the actual date of such appointment. *Act 44 A.O. Jan. 1910*

*Q.* What are the powers of punishment of a regimental court-martial ? *Act 47*

*A.* Detention, maximum forty-two days ; fines for drunkenness, maximum £1 ; stoppages of pay to make good loss of or damage to arms, kit, accoutrements, etc. *Act 19* *Act 24*

Dismiss a soldier of the Territorial Army. *Act 181 (6)*

Dismissal or reduction to a lower rate of pay of Army schoolmaster, provided he is not ranking as a warrant officer. In no case can a regimental court-martial award forfeitures. *Act 183 (a)* *Act 182*

*Q.* What are the powers of punishment of a general court-martial ? Include in your answer special sentences for officers.

*A.* Death, if two-thirds of the members agree. *Act 44, 48*

Penal servitude for not less than three years. *Act 44*

Imprisonment or detention, maximum two years. *Act 44*

Discharge with ignominy from His Majesty's Forces—forfeitures, fines for drunkenness, maximum £1 ; stoppages. *Act 32* *Act 19, Act 24*

Officers—severe reprimand, reprimand, loss of seniority of rank. *Act 47*

N.C.O.—Reduction to the ranks or a lower rank ; loss of seniority of rank. *Act 47* *Act 183 (3)*

*Q.* What are the powers of punishment of a district court-martial ?

*A.* The same as a general court-martial, except it cannot pass a sentence of death or penal servitude, and cannot sentence a warrant officer to imprisonment or detention. *Act 44* *Act 182*

*Q.* State what you know regarding field punishment as a sentence by a court-martial. *Act 44 (5)*

*A.* Soldiers can only be sentenced to this punishment for a period not exceeding three months, and only when the offender is on active *M.L. p. 598*

service. The court, in addition, may order the offender to forfeit not more than three months' pay.

*Q.* What are the forfeitures a court-martial can sentence an offender to suffer?

*A.* All or any good conduct badges; all or any service towards pension, but not towards discharge. To forfeit all medals with annuities or gratuities attached to them except the V.C.

*Q.* Suppose a soldier was tried (charge, stealing £10), but £7 of it was found in the possession of the soldier. What would be the sentence in order to make good the sum to its lawful owner.

*A.* The court would order the man to be placed under stoppages of £10 as mentioned in the charge. The confirming officer would order the £7 found in the possession of the accused to be restored to the person from whom it was stolen, and when the balance was received by stoppage the sentence would be finished. N.B.—The court cannot order its restoration. *Act 75* *K.R.* *586*

*Q.* Explain by example how the court would write a sentence of reduction to the ranks in the case of a lance sergeant. *M.L.* *p. 576, 577*

*A.* The court sentence the accused, No. 8 Corporal (Lance Sergeant) Mike Murphy, 2nd Royal Irish Regiment, to be reduced to the ranks. Sentence noted in the margin. *O'Dowd* *p. 155*

*Q.* Under what circumstances can field punishment be inflicted, and what rules must be observed in carrying it out?

*A.* 1. On active service only, and then to private soldiers, either by order of a C.O. or by sentence of a court-martial. *Act 46* *Act 44, M.L. p. 598*

Field punishment—No. 1 kept in irons or handcuffs. 721

Field punishment—No. 2, he shall not be attached to a fixed object.

Attached when in irons to a fixed object not more than two hours per diem, or three days out of four; no mark to cause any injury.

Not exceeding three months by sentence of court-martial and forfeiture of pay; maximum three months.

By order of a C.O., maximum twenty-eight days and forfeiture of pay for twenty-eight days in addition, and in both cases commencing on the day of the sentence.

### MILITARY PRISONS AND DETENTION BARRACKS.

*Q.* Where do military offenders undergo their sentences of imprisonment or detention, and what is done with offenders who are sentenced to long terms of punishment abroad?

*A.* 1. A sentence of detention is undergone in a detention barracks, and the offender cannot be sent to a military prison. Sentence of imprisonment, the offender goes to the military prison at Woking, but a man could be sent to a detention barracks.

2. Persons sentenced to imprisonment for offences of a fraudulent nature under *Act 18* (*5*). Theft from a comrade or officer or regimental institute, or frauds by person in charge of goods, etc., or for civil offences are sent to a civil prison. *Act 18* (*4*) (*5*) *Act 17* *Act 41*

3. Sentences over fourteen days, in a detention barracks. Sentences up to fourteen days, detention in a branch detention barracks or a detention barracks, whichever is nearer.

4. Persons sentenced to penal servitude or to imprisonment or detention exceeding twelve months in India or a colony shall be sent to a prison in the United Kingdom, except persons born out of the United Kingdom and not domiciled in it, or by reason of their place of enlistment: a Royal Malta Artillery or persons of colour, *e.g.*, soldiers of West India Regiment. *M.L. Ch. v. par. 102 Act 131 K.R. 645*

*Q.* Explain the procedure when a court-martial wish to recommend the accused to mercy, and state why it would not be better to pass a lenient sentence. *R.P. 49*

*A.* The court may record in the proceedings the number of votes it was adopted or rejected by, give their reasons for doing so, also if they recommend the restoration of forfeited service. The recommendation is embodied in the proceedings below the sentence, and the president adds his signature; the judge-advocate, when present, also signs. *M.L. p. 578*

1. In two cases where a conviction follows the court must pass a specified sentence. Scandalous conduct of an officer on conviction, cashiering; the crime of murder, death. *Act 16 Act 41*

2. The court should, when it is necessary to maintain discipline, pass a severe sentence, because should the confirming officer wish he can reduce the amount. *Act 57*

*Q.* When the court-martial has finished sitting, who is responsible for the custody of the proceedings?

*A.* The judge-advocate, if there is one, if not the president. *R.P. 97*

*Q.* Suppose the proceedings of a court-martial are lost before confirmation, what follows?

*A.* 1. If there is an original copy it can be certified by the president or judge-advocate and confirmed by proper authority. *R.P.100*

2. If there is no such copy, with the consent of the accused if sufficient evidence can be obtained by the president or a member of the court writing out the substance of the charge. Finding and sentence, this being done the members sign the document and it is confirmed by the authorized authority. If the accused objects to this procedure, a second trial can take place.

*Q.* Is a person entitled to have a copy of the proceedings of a court-martial by which he was tried? *R.P. 99*

*A.* Yes, at the rate of 2d. per seventy-two words of a regimental court-martial or district court-martial within three years, and a general court-martial within seven years from date of trial.

## CHAPTER VII

The Confirming Officer—Terms "Commute," "Remit," "Mitigate"—Promulgation of the Proceedings of Courts-martial—Where and for how long a Record of a Court-martial is kept.

### CONFIRMATION OF COURTS-MARTIAL. MANUAL OF LAW, pages 579-599. MILITARY LAW, chap. v., par. 92.

*Q.* What persons confirm the sentence of a general court-martial and district court-martial?

*A.* (1) In the United Kingdom the King confirms all general courts-martial. *M.L. Ch. v. par. 92*

(2) Abroad, an officer who by a warrant from the King is empowered to do so, or to delegate this power to another officer; in extreme cases out of the United Kingdom a captain could confirm a general court-martial. *Act 122*

*A district court-martial* can be confirmed by any officer who can confirm a general court-martial; that officer can empower an officer under his command to convene and confirm a district court-martial provided, and then an officer who confirms shall not be below the rank of captain. *Act 123*

*Q.* When does a sentence of a court-martial require the approval of the civil authorities in addition to the military authority? *M.L. Ch. v. par. 99*

*A.* A sentence of death (save on active service) passed in a colony, and a sentence of penal servitude for an offence under *Act 41*, requires the approval of the governor of a colony. *Act 54 (7)*

In India a sentence of death passed for the crimes of murder and treason only, and a sentence of penal servitude passed for civil offences under *Act 41* are approved by the governor-general.

*Q.* What special sentences passed on officers by courts-martial abroad are sent home? *M.L. p. 601*

*A.* Sentences of death, penal servitude, cashiering or dismissal of officers passed abroad are sent to the King for confirmation, except those sentences are passed in India, where the commander-in-chief can confirm. *M.L. Ch. v. par. 95*

*Q.* Who can confirm a regimental court-martial?

*A.* The convening officer, or any officer having power to convene it at the date the proceedings were sent for confirmation. The C.O. of the regiment, or in his absence the officer in temporary command if not below the rank of captain; officers who can confirm the higher courts; on board ship a C.O. of any rank, but if held on board a Royal Navy ship, the written sanction of the captain to convene and confirm is requisite. *Act 54 M.L. Ch. v. par. 90 M.L. p. 607*

When a regimental court-martial is held on such ship the captain sends written information to the Admiralty.

*Q.* What recent alterations have been brought into force relative to the governor of a colony convening and confirming the sentences of a general court-martial? *new Act 122 A.O., Jan. 1910*

*A. Note to Section 122, Army Act.*

"After line 2, *insert*:—Sub-section (6). Under the amendment "made by the Army (Annual) Act, 1909, a governor of a colony "(s. 190 (27) as amended by the Army (Annual) Act, 1909), can by "warrant be authorized to convene, and confirm the findings and "sentences of, general courts-martial, if he has had conferred upon "him the command of any of His Majesty's forces. For the present "the issue of general court-martial warrants has been restricted to "governors of colonies in which there are no regular troops.

"A governor to whom a general court-martial warrant is issued "may convene and confirm courts-martial within the territorial "limits of the colony for the trial of offences committed against the "Army Act by persons subject to that Act.

"For instance, if a force is raised in the colony under the Army "Act, any offence committed against that Act by a member of such "force while within the territorial limits of the colony may be tried "by court-martial—the court being convened and the proceedings "confirmed under authority of the warrant issued to the governor. "Or, again, when a force raised in the colony under the Colonial "enactment is serving for the time being solely under the Army Act, "and *not* under the Colonial enactment, offences against the Army "Act may be dealt with by court-martial within the colony under the "general court-martial warrant issued to the governor.

"The governor cannot convene or confirm a court-martial held "outside the territorial limits of the colony, but where troops who "are subject to the Army Act are embarked in ships (not being ships "commissioned by His Majesty) at ports in a colony where there are "no regular troops, for conveyance to a seat of war, the governor of "that colony, if in possession of a general court-martial warrant, "may issue a warrant, on Army Form A 5, to the senior combatant "officer on board any such ship, if not below the rank of captain, "empowering him to convene and confirm district courts-martial "held for the trial of a person under his command who is subject "to the Army Act. The warrant thus given (Army Form A 5) "should be granted for the period of the voyage only, and will become "inoperative as soon as the troops reach the port of disembarka-"tion, when they come under the command of an officer of the "Regular Forces having power to convene and confirm general "courts-martial."

**THE CONFIRMING OFFICER. MILITARY LAW, page 579.** 695

*Q.* What persons cannot confirm a court-martial, and do all the proceedings of a court-martial required to be confirmed? *Act 54 (4)*

*A.* The judge-advocate or a member of the court-martial cannot confirm, and if the accused has been acquitted, it requires no *R.P. 120 (b)*

confirmation. The provost marshal or the assistant provost marshal cannot confirm a field general court-martial. *Act 54 (3)*

*Q.* Define the terms, "Commute," "Remit," "Mitigate."

*A. Commute* is reducing a punishment awarded by court-martial to one of less severity in the scale of punishments, *e.g.*, a sentence of death commuted to penal servitude. *Act 57 note* *Act 44*

*Remit* is taking off the whole of the punishment, or a portion of it, *e.g.*, a soldier sentenced to eighty-four days' imprisonment with hard labour; let him off all, or remit the hard labour only. *R.P. 51* *(b) R.P. 56*

*Mitigation* is making the sentence of less severity of the same kind of punishment, *e.g.*, seven years' penal servitude mitigated to three years' penal servitude. *Act 54 (5)* *R.P. 51, note*

*Q.* How can the confirming officer act when he receives the proceedings of a court-martial?

*A.* 1. Commute, mitigate, or remit the sentence. *R.P. 57*

2. He can send back a part of the proceedings for revision, *i.e.*, the finding, the sentence, or the whole of the trial, but only once—or refer to superior authority. *note*

3. He can confirm and can decrease, but not increase a sentence, or he can refuse to confirm.

4. Order the restitution of money found on a soldier convicted of theft to be restored to its lawful owner. *Act 75* *K.R. 586*

5. Alter an informally expressed sentence if it is otherwise legal, *e.g.*, a sentence passed of three months' detention should be written eighty-four days.

*Q.* How would a confirming officer act if he found the sentence of the court was totally illegal? *New K.R. 598*

*A.* Refuse to confirm it and send it back for revision.

(*a*) If the finding was legal he could confirm it and release the accused; or

(*b*) Order a second trial, *e.g.*, a district court-martial sentencing a warrant officer to detention or imprisonment is a totally illegal sentence. *Act 182*

*Q.* If the confirming officer wishes to comment on the proceedings of a court-martial, can he do so? And with what restrictions?

*A.* Great care should be taken not to interfere with the discretion of the court. Should he wish to comment on the proceedings, his remarks will not form part of the proceedings, but will be kept separate from it. They will be communicated to the court in a separate minute, or made known in the orders of his command, if the interest for the maintenance of discipline requires it. In no case shall he comment on the finding of Not Guilty or the leniency of the sentence, but will embody his views in writing to superior military authorities' decision. *New K.R. 589* *K.R. 590*

*Q.* When a court-martial reassembles for revision— *M.L. p. 578*

(*a*) Can any fresh evidence be taken?

(*b*) If the president or member is absent, what follows?

(*c*) If the sentence is sent back because it is either wholly or partly illegal.

(*d*) When the confirming officer sends back the finding or sentence, or both for revision.

*A.* Evidence as to the cause of the absence of the president or member can be taken, but no fresh evidence bearing on the case. *Act 54 (2)*

If on reassembly of the court the president is absent, the senior member shall adjourn and report to the convening officer, who can appoint him president if he is of the required rank and the court is not reduced below the legal minimum; but when a member the president reports, and if the court is not reduced below the legal minimum it can proceed. Once a court has been sworn, no fresh member can be added. *Act 53*

In such a case the confirming officer, if the court was reduced below the legal minimum, etc., should act within his jurisdiction and confirm or not, but where a totally illegal sentence and procedure occurred, he could order a second trial or release the accused.

*Q.* Suppose the confirming officer confirmed the finding only of a court-martial and released the soldier. What effect would it have on the man's military career? *K.R. 1916*

*A.* It counts as a conviction by court-martial, and is recorded in the soldier's regimental conduct sheet.

*Q.* When would a confirming officer be justified to refuse confirmation of a court-martial? *Act 57 note*

*A.* If the accused had been unduly restricted in his defence, on a plea of guilty if the charge was bad in law, or where a finding of guilty has been determined, with the exception of certain words which form the essence of the charge; when a special finding fails to disclose an offence for which the accused could be found legally guilty, or where the jurisdiction or composition of the court was incorrect. *Act 48 R.P. 19 R.P. 21 (a) Act 182*

*Q.* Suppose the proceedings of a court-martial were sent back for revision on the following grounds. How would the court act?

1. The sentence was totally illegal.
2. The sentence was partly legal and partly illegal.

*A.* 1. When a court have passed a totally illegal sentence, *e.g.*, an officer who was tried for scandalous conduct and sentenced to be dismissed; on revision, the court would sentence him to be cashiered. *Act 16 R.P. 56 note*

2. Where a court-martial passed a partly legal and partly illegal sentence, they merely pass the legal part on revision, *e.g.*, a district court-martial sentenced a sergeant to penal servitude and to be fined £1 for drunkenness; on revision, the court fine him £1. *R.P. 51 R.P. 56 Act 44 Act 19*

*Q.* Describe the courses open to the court when ordered to reassemble for revision.

*A.* 1. When the finding or sentence or both are sent for revision, the court may let their former finding and sentence remain unaltered.

2. When the proceedings are sent back and there were several *M.L.*

charges, the court could not find him guilty of a charge upon which they had acquitted him, but they could find him not guilty on a charge they previously found him guilty. *p. 578*

3. The court cannot alter a finding on a charge which would entail a more severe punishment, *e.g.*, if a soldier in the first instance had been tried for absence without leave, the court on revision could not find him guilty of desertion, because that crime entails forfeitures. *R.P. 51 note* *R.P. 52*

4. A court may decrease but not increase their former sentence.

*Q.* How are the proceedings of a court-martial promulgated ?

*A.* The proceedings of a court-martial, including the charge, finding, and sentence are read out when practicable on a parade, or in such a manner as directed by the confirming officer; the accused must be informed of the finding and sentence. A recommendation to mercy must be stated to the accused and to the members of the court in a separate minute, or published in the orders of the command. *R.P. 53* *K.R.493* *M.L.* *p. 584* *R.P. 49* *new*

*Q.* What becomes of the proceedings of a court-martial after promulgation ?

*A.* The proceedings of general and district courts-martial are sent to the Judge-Advocate-General's department. The former are kept for seven years and the latter for three years. *R.P. 98* *K.R. 595, K.R. 1925*

Regimental court-martial proceedings are recorded in the regimental books, then laid before the general at his next inspection, and finally forwarded to the officer in command of records and kept by him for three years.

Page 54.—*Add* "Where statements made by an accused, in mitigation of punishment, reveal facts which might influence confirming officers in determining the sentence, or contain matter which might call for disciplinary action, investigation into the truth or otherwise of such statements should be made by the confirming officer, if practical, prior to confirmation. *A.O.*350 1911. *New K.R.* 589 *A.*

If such enquiry is likely to cause substantial delay in confirmation, confirming officers may confirm the proceedings forthwith, and make investigation with a view to subsequent re-consideration. They will use their own discretion whether they will retain the proceedings or will forward them at once to the Judge-Advocate-General; in the latter case, the outcome of the investigation will be communicated to the Judge-Advocate-General."

"In forwarding proceedings which contain statements made in mitigation of punishment, the convening letter should state (where necessary) that such statements have, or are being, investigated." *A.O.*350 1911. *New K.R.* 595 *A.*

## CHAPTER VIII

Courts of Inquiry (including those held on Soldiers Illegally Absent and Prisoners of War)—Boards: For what object assembled.

### COURTS OF INQUIRY.

*Q.* A court of inquiry is held for the purpose of determining the illegal absence of a soldier.

(*a*) What time shall have elapsed since the man first absented himself; (*b*) describe the method of taking evidence; (*c*) and what becomes of the record of its proceedings? *Act 72* *K.R. 673*

*A.* (*a*) A court consisting usually of a captain and two subalterns is assembled when the soldier has been twenty-one days absent without leave, excluding the day the man first absented himself and the day the court assembled, but the court is not sworn.

(*b*) The witnesses are sworn as to the date the soldier absented himself, and that he is still absent, and any deficiencies of kit. The court satisfy themselves the soldier was in possession of any articles stated to be deficient at a reasonable time before he left. Witnesses who wish can come forward on behalf of the absentee. *R.P.125*

(*c*) The declaration of the court is signed by all the members and states the date the man absented himself, and that he is still illegally absent, and any deficiencies of kit, etc. The C.O. shall order the declaration of the court to be kept with the soldier's duplicate attestation sheet, and such declaration has the effect of a conviction for desertion, unless the soldier is apprehended or surrenders. *K.R. 1909* *Act 154*

### COURTS OF INQUIRY—NEW.

*Q.* By whom and with what object can a court of inquiry be assembled? What is its composition and mode of procedure? *A.O. Jan., 1910*

*A.* A court of inquiry may be ordered to assemble by the Army Council, or an officer commanding any body of troops. Its object is to collect evidence. The court will be guided by written instructions from the officer who ordered it to assemble, who will state the general character of the information required, and whether a report is to be rendered or not. The court can consist of any number of officers of any rank or department according to the matter under investigation. When the military reputation of an officer or soldier is affected, those persons must be given an opportunity of attending to give evidence on their behalf and to cross-examine or examine witnesses, producing witnesses as to military reputation if they wish. The court can question witnesses to test their accuracy. *R.P.124*

*Q.* Describe the procedure of a court of inquiry held on a returned prisoner of war.

*A.* 1. Evidence is taken on oath, the court make a declaration not on oath, the officer who orders the court to assemble will direct the court to record their opinion as to whether it was the chances of war or otherwise that caused the person's capture. The court can be reassembled as often as the officer who orders the court to assemble wishes, and the proceedings will be forwarded to him. *R.P. 124 (4)*

2. The person who is the subject of investigation will be entitled to a copy of the proceedings. No matter stated against the man or any confession made by him can be used against him, if he is tried hereafter by court-martial, except for persons wilfully giving false evidence. *Act 29*

*Q.* How do boards differ from courts of inquiry? With what object are they held? Give a few examples of matters dealt with by them.

*A.* They differ from courts of inquiry in so far as the objects for which they are held do not involve points of discipline. The procedure is the same usually as the other court. *K.R. 676*

(*a*) A board might be assembled to inquire into the cause of a loss of stores. *K.R. 1021, 1023*

(*b*) For the destruction of documents over three years old. *K.R. 1914*

(*c*) Application for good conduct medals. *K.R. 1748*

# CHAPTER IX

## General Provisions as to Witnesses and Evidence

Persons incompetent to give Evidence as Witnesses—Credibility of Witnesses—Expenses of Witnesses attending Court-martial—Privileges of Witness as to Answering Questions—Leading Questions—Examination-in-chief, Cross-examination, Re-examination of Witnesses—The Accused giving Evidence—Accomplices.

### WITNESSES AT COURTS-MARTIAL.

### MILITARY LAW, chap. vi. RULES OF PROCEDURE, 73-86.

*Q.* Who are incompetent to give evidence at a court-martial?

*A.* 1. Husband and wife are incompetent to give evidence against each other, except in cases of violence or under the Married Woman's Property Act, but husband and wife can always give evidence for each other. *M.L. Ch. vi. par. 86, 87*

2. Persons of unsound mind, weak intellect, or extreme youth.

3. Persons who are being tried jointly once the court has been sworn; if one of the accused requires another's evidence, he should inform the prosecutor, or the court before it is sworn. Should the prosecutor require the evidence of an accomplice, he should be given a free pardon, and can give evidence for the prosecution, *i.e.*, King's evidence. *R.P. 15 M.L. Ch. vi. 84*

4. A member of the court or judge-advocate can only give evidence for the defence. *Act 50 note (3), R.P. 77*

*Q.* Explain what you understand by the credibility of a witness.

*A.* A person may be competent to give evidence, but it does not follow he must be believed; his character may throw grave doubts on his evidence, such as a notorious character well known to the police. The existing relationship between the parties concerned may weigh in considering the evidence; parent giving evidence on behalf of his child, or vice versa, or master for or against servant, or vice versa; prosecutor as witness and witnesses called by him. *M.L. Ch. vi. par. 91 Paper v.*

*Q.* Are witnesses attending a court-martial exempt from being arrested?

*A.* A witness cannot be arrested within a reasonable time of his going to and coming from a court-martial, except on a criminal charge. The court determine what is considered a reasonable time. *Act 125*

*Q.* What rules are in force as to witnesses who attend a court-martial being paid their expenses?

*A.* Within reason, the prosecution pay the expenses for a soldier. Civilians are tendered their expenses to attend the court, and granted an allowance according to their status when finished, their attendance being certified by the president of the court-martial. *R.P. 78*

**WITNESSES REFERRING TO NOTES. VIDE CHAPTER V.**

**EVIDENCE OF GOOD CHARACTER. CHAPTER IV.**

*Q.* Are witnesses bound to answer all questions put to them at a court? *M.L. Ch. vi. 93*

*A.* 1. A witness cannot be compelled to answer any question which will render him (or his wife) to any criminal charge, or to any military punishment, *e.g.*, Private A is giving evidence against the accused. Suppose he was asked: "Are you not a fraudulently enlisted man from the Berkshire Regiment?" he could not be compelled to answer, even if it was true. *Act 13*

2. Public servants cannot be compelled to divulge any official communications between State officials without permission of the head of the department concerned. This would include a confidential report—official letter. *M.L. Ch. vi. pars. 95, 96, 97*

3. The proceedings of a court of inquiry as to the statements made by witness or the accused, or any confession made by him, except for the trial of a military witness who gave false evidence before such court. *M.L. Ch. vi. par. 98 R.P. 124, Act 29*

4. Husband and wife are not compelled to disclose any communications made to each other during married life. *M.L. Ch. vi. par. 100*

**PROFESSIONAL COMMUNICATIONS.**

5. Legal advisers shall not divulge any matter confided to them by their clients during or at the termination of their employment, except by consent of such client, or on a matter that has come to their notice in a non-professional manner, or if a fraud has been contemplated during their employment. Doctors and clergymen are not privileged from communications made to them in professional confidence. Judge Best said: "I for one will never compel a clergyman to disclose communications a prisoner told him, but if he chooses to disclose them, I shall receive them. I shall receive them as evidence." It is not usual to press clergymen in such cases. *M.L. Ch. vi. par. 102* *Stephen's "Digest of Law," p. 186.*

6. *Degrading answers.*—Practically the court can decide whether the accused must answer a question, if his reply will degrade him in the eyes of the court. This is decided by whether the answer would affect the credibility of the witness as regarding the charge on which they are trying him. *M.L. Ch. vi. par. 114 R.P. 92*

*Q.* How may the credit of a witness be impeached?

*A.* By bringing the evidence of persons who swear that they, from their knowledge of the witness, believe him to be unworthy of credit on oath; such persons may give their reasons for such statement only in the cross-examination, but the party calling such witness can bring evidence to disprove such. *M.L. Ch. vi. par. 117*

2. When under cross-examination a witness may be asked questions to test his accuracy, veracity, or credibility.

*Q.* What is a Leading Question? When are such questions allowed?

*A.* A Leading Question is one put in such a form directly or indirectly to a witness which suggests the answer Yes or No., *e.g.*, "Did the accused then go into the barrack room?" but, "What did the accused do next?" If it were not for this rule a favourable dishonest witness might be made to give any evidence desired. *M.L. Ch. vi. par. 107*

1. When a witness turns directly hostile to the person calling him, appears interested on the other side, or is unwilling to give evidence, the party calling him can put leading questions to the witness, but he cannot impeach his credit by giving evidence of bad character. *M.L. Ch. vi. par. 111*

2. In cross-examination leading questions may be put to and must be answered by a witness. *M.L. Ch. vi. par. 112*

3. When a witness is evidently labouring under a want of recollection, the court may at their discretion allow him to be assisted by a suggestion, *e.g.*, the name or contents of a lost document. *M.L. Ch. vi par. 110*

4. When direct examination fails to elicit a distinct answer as to the identification of a person or thing, that person or thing may be produced in court, and he may be asked if he can identify it.

5. In purely introductory matter forming no real part of the inquiry.

*Q.* What do you understand by the examination-in-chief of a witness? To what further matter may the cross-examination and re-examination be directed?

*A.* (*a*) The examination-in-chief, or direct examination, is when a witness first comes into court and is examined or asked to make a statement regarding the charge against the accused by the party calling him—it relates to the matter at issue.

(*b*) The cross-examination is that conducted by the opposite side after hearing evidence for the prosecution or defence; it may refer to irrelevant matter to throw a witness off his guard who has learned up the story, and thus shake the accuracy, credibility, or credit of the witness. *M.L. Ch. vi. par. 118*

(*c*) The re-examination is then conducted by the party calling the witness, and is confined to matter introduced by the cross-examination, and if new matter is introduced the opposite side may cross-examine upon it.

*Q.* With what object are irrelevant questions put to a witness at a court-martial, and with what restrictions? *M.L. Ch. vi. par. 113*

(1) *Vide* above questions, part B.

*A.* The witness should not be pressed as to facts which, if admitted, would not affect the point at issue or the credit of the witness.

*Q.* When a witness is under cross-examination evidence cannot be given to contradict his answer to a question which only tends to shake his credit. State exceptions to this rule. *M.L. vi. par. 115*

*A.* Where the witness is asked if he has ever been convicted of a felony or misdemeanour, and denies or refuses to reply, or when he is asked a question to prove he is not impartial.

*Q.* How is it ensured that the evidence of a witness at a court-martial has been recorded correctly?

*A.* It is read over to him before he leaves the court; he can make alterations, but it is undesirable as it leads to further cross-examination. The president should be careful to hear the question (if he thinks it necessary) which has been put to the witness before recording his answer. *R.P. 83*

*Q.* When the accused elects to give evidence himself, can he be asked questions tending to show he committed previous offences or is of bad character? *R.P. 80*

*A.* 1. Not unless the proof he has been committed or convicted of such other offence is admissible as evidence to prove the offence he is charged with.

2. Or if the accused himself, or any counsel or person acting as his adviser, has asked questions of the prosecutor's witnesses to establish or prove the accused is of good character.

3. If the accused involves imputations on the character of the prosecutor or witnesses for the prosecution, or if he has given evidence against any other person charged with the same offence.

*Q.* Is the evidence of accomplices admissible against their associates in crime?

*A.* Yes, unless they are tried together, but such evidence is received with great caution, and it should be confirmed by unimpeachable testimony in some material point. *M.L. Ch. vi. 85*

# CHAPTER X

THE LAW OF EVIDENCE, *M.L., Chap. vi., page 55.*

**Judicial Notice—Presumptions in Law—The Burden of Proof—Evidence must be to the point at issue—Evidence as to the tendency of the Accused to Commit Crime—Documentary Evidence—Public and Private Documents—Direct and Circumstantial or Indirect Evidence—The best possible Evidence must be produced—Number of Witnesses requisite to obtain a Conviction—Opinion as Evidence—Confessions—Depositions—Admissions—What must be proved—Hearsay Evidence.**

*Q.* Define the meaning of the term "Evidence."

*A.* Statements made by witnesses under examination or contained in documents laid before the court for inspection—commonly known as oral or documentary evidence.

*Q.* What laws of evidence are courts-martial required to follow? *Act 128*

*A.* The same as laid down by civil law in England, and no person shall be bound to answer any question or produce any document he could not be required to observe in proceedings before a civil court.

*Q.* What do you understand by a court taking judicial notice of certain facts? *M.L. Ch. vi. par. 10*

*A.* All matters of notoriety, including those within their general military knowledge, such as the relative rank of military officers, the general duties, authorities, obligations of different members of the Service, or generally matters which an officer as such may reasonably be expected to know. It would not be necessary to prove the Battle of Waterloo was fought on 18th June, 1815. Judges take judicial notice of Acts of Parliament, the accession of the King to the throne, etc. *R.P. 74*

*Q.* What do you understand by a "Presumption in law?"

*A.* A rule of law that courts and judges shall draw a particular inference from a particular fact or from particular evidence, unless and until the truth of such inference is disproved, *e.g.*, when an unlawful act has been committed a criminal intention is presumed. *Stephen's "Digest of Law," p. 2*

*Q.* What are the two rules as to "Burden of proof"? *M.L. Ch. vi. par. 12*

*A.* 1. Every man is presumed to be innocent until he is proved guilty.

*Q.* What is the meaning of the rule, "He who asserts a fact must prove it"?

*A.* The person who brings the charge must produce evidence to prove the offence was committed with which the accused is charged, or of facts from which the court may reasonably believe that the offence was committed.

*Q.* When is the burden of the proof shifted from the prosecutor on to the accused?

*A.* 1. When facts have been proved which raise a presumption of the guilt of the accused in the minds of the members of the court-martial, *e.g.*, A is accused of stealing a £5 note; the prosecutor produces evidence of witnesses, and it is proved soon after the theft was committed the £5 note was found in A's possession. He has to prove how he got. *M.L. Ch. vi. par. 13*

2. A soldier charged with leaving the ranks without orders; it would lie with the accused to prove that permission to leave the ranks had been given.

3. Where it is proved an unlawful act has been committed, a criminal intention is presumed. On a charge of murder the law presumes malice from the act of killing, and the accused must disprove malice by justifying or extenuating circumstances. *M.L. Ch. vi. par. 14*

*Q.* Explain the meaning of "Evidence must be to the point at issue," *i.e.*, "Nothing shall be admitted that does not tend to prove or disprove the charge," and give exceptions. *M.L. Ch. vi. pars. 15-29*

*A.* A soldier charged with stealing, say £10, the evidence must be produced to show he stole the money under circumstances stated in the charge. The fact he stole horses or anything else would be inadmissible.

*Facts showing a motive.*—A is accused of a crime; the fact that either before or at the time, or after the alleged crime, A caused circumstances to exist tending to give the case an appearance favourable to himself, or that he destroyed documents or papers, or concealed them, or prevented a witness attending who would be unfavourable to him, or got a witness to give false evidence. *Stephen's "Digest of Law," p. 10*

*Facts showing intention, knowledge or belief.*—The fact A being tried for murdering B, evidence he attempted to kill B on a former occasion would be admissible; uttering base coin if he had on a previous occasion done so, and is now tried for doing so. The previous case would be evidence as to intention, as he knew the coin was bad. *M.L. Ch. vi. par. 22*

*Acts of conspirators.*—When the conspiracy is proved, the sayings, doings, or writings of one accomplice can be used against the other, *e.g.*, A and B, two custom-house officers, agree to pass goods through on too small a payment of duty. A made a false entry, and B shared the profits of the fraud. That entry is evidence against A and B.

*Res gestæ.*—All facts which are so connected with the main fact at issue as to introduce, explain it, or form in connection with it one continuous transaction, *e.g.*, on a charge of desertion it may be admissible to inquire into the fact of (not the facts attending) a highway robbery having been committed by the accused on the night on which the accused absented himself, and for which he had been tried and convicted by a civil court. The crime of desertion depends on the intention of not returning, and might be inferred, in connection with other circumstances regarding the robbery, to prove accused's intention to desert. *M.L. Ch. vi. par. 21* *M.L. Ch. iii. par. 13*

*Q.* Can the prosecutor give evidence that a soldier has a tendency to commit a crime? *M.L. Ch. vi. par. 20*

*A.* No; *e.g.*, a soldier, if tried for sleeping on sentry, or for insubordination, the prosecutor could not state he had committed these crimes on other occasions.

*Q.* What two sub-rules must be kept in mind when deciding the admissibility of documentary evidence? *M.L. Ch. vi. par. 31*

*A.* That a verbal account of the contents of a document cannot be received if the document can be obtained. That a copy of a document cannot (certain exceptions) be received if the original is obtainable.

*Q.* When may a copy of a private document be produced?

*A.* 1. When it is in the hands of the adverse party—he refuses to produce it—or any party who fails to produce it when ordered.

2. When the court is satisfied the original is lost or destroyed.

3. If in a foreign country from where it cannot be removed, or if by its bulk it is not removable.

4. Entries in banker's books.

The secondary evidence is produced by bringing a copy of the original to court and swearing a witness as to its being correct. If the original is lost a witness swears to its contents, and such is accepted. *M.L. Ch. vi. par. 35*

*Q.* Distinguish between public and private documents. *M.L. Ch. vi. par. 37*

*A.* There is no general definition of public document, but it may either be produced or a copy of it.

*Q.* What do you understand by Direct Evidence? *M.L. Ch. vi. par. 41*

*A.* Statements by a person who saw, or otherwise observed with his senses, the fact in question.

*Q.* Define Circumstantial Evidence, give an example and briefly compare it with Direct Evidence. *M.L. Ch. vi. pars. 41, 42, 43*

*A.* Direct or Circumstantial Evidence is evidence of facts, from which the fact in question may be inferred or presumed, *e.g.*, a farmer went to a fair and sold some horses, for which he was paid in bank notes, the numbers of which were known. This man later on in the day was found dead, a revolver bullet having penetrated his skull. Near the deceased was found a newspaper with a piece torn off, also a pistol, the property of a gentleman, which had been missed the previous day. A servant in the employ of this gentleman was arrested, and in his possession some bank notes were found which were identified as having been given to the deceased, also the missing piece of newspaper. It was also proved this servant kept his master's revolvers and other kit in order, and had access to the room they were kept in. This circumstantial evidence points strongly to guilt.

*Direct Evidence* is not better than circumstantial evidence. The difference is one not of degree but of kind. Very often the court have to depend on indirect evidence, especially, say, murder cases. Facts cannot lie, whilst witnesses may do so; but facts may deceive, therefore the court shall consider before a finding of guilty that the circumstances are consistent with the accused having committed *M.L. Ch. vi par. 41*

the crime, and that they are inconsistent with any other rational conclusion than that the accused is the guilty person.

*Q.* Distinguish between "Repetition of evidence" and "The best possible evidence."

*A.* The rule that requires the best possible evidence does not require the strongest possible assurance, *i.e.*, the fullest proof the case admits of, nor repetition of evidence beyond that which is sufficient to establish the fact. *M.L. Ch. vi. par. 44*

*E.g.*, on a charge of striking a C.O. on parade in front of his regiment one witness would be sufficient if he had a favourable position from where he could see the occurrence.

*Q.* Is there any exception to the rule that the evidence of one witness is legally sufficient to convict?

*A.* One witness is sufficient, statutory exceptions to treason and treason felony. Perjury, one witness is not sufficient, without some material and independent corrobative evidence in proof of the statement made. *M.L. Ch. vi. par. 45*

*Q.* Explain the different cases which are exceptions to the rule that "Opinion is not evidence." *M.L. Ch. vi. pars. 63-69*

*A.* The opinion of an expert, that is to say, a person skilled in any science or art is admissible, viz.:

1. In a poisoning case a doctor may be asked if a particular poison produces particular symptoms.

2. An officer may give his opinion on a military subject of which he is an expert, such knowledge not being generally possessed by the court.

3. Experts in handwriting can be asked to give their opinion in case of forgery, anonymous letters, etc.

*Q.* Distinguish between a voluntary and involuntary confession? *M.L.*

*A.* A voluntary confession is one made voluntary and by a man's free will. The prosecution must always prove the circumstances under which it was made. *Ch. vi. par. 74*

An involuntary confession is one made by the accused by an inducement, threat, or promise from a person who has power to deal with the case, such as a magistrate or a C.O., or superior military authority, *e.g.*, to be an involuntary confession the inducement must have reference to the escape of the accused from the criminal charge against him, and must be made by some person who has power to relieve him wholly or partly from the consequence of such confession; *e.g.*, a chaplain of a prison exhorts a man who is charged with murder to confess his sin on religious grounds; *e.g.*, a gaoler promises a prisoner if he confesses his guilt he will allow him to see his wife. Neither of these persons have power to deal magisterially with the accused, hence they are voluntary confessions. A confession made under a promise of secrecy, obtained by deception, or when the accused was drunk, is voluntary. *M.L. Ch. vi. par. 76*

*Q.* State what you know regarding depositions, and state when they would be used at a court-martial. *M.L. Ch. vi. pars. 57, 72*

*A.* It may happen a witness who attended at the preliminary inquiry is unable to attend the court, through illness, or he may have died.

The accused is taken to the place where the sick man is residing, the latter is duly sworn in the presence of the accused, who can cross-examine him in the presence of a magistrate; should the deponent then be unable to appear at court, or die, this deposition can be produced at the trial of the accused. In compliance with above conditions it can be used at a court-martial for offences under *Act 41.* *Act 41* *M.L.* *p. 556* 74

*Q.* Give a brief description of the Law of Evidence regarding admissions. *M.L.* *Ch. vi. par. 72*

*A.* It is the practice at courts-martial to receive admissions in open court as to collateral or unimportant facts not showing a criminal intent, but they must be proved either by the prosecution or defence they expedite the proceedings and do not affect matter under trial; *e.g.*, either party may admit the authenticity of orders, or letters, or the signature of a document.

*Q.* To what extent must a charge be proved? *M.L. Ch. vi. par. 8*

*A.* It is sufficient to prove the substance of the charge.

In certain cases, *e.g.*, the accused may be convicted of an offence other than that on which he is charged. A soldier tried for murder, if the prosecution fails to prove malice, could be found guilty of manslaughter, being where the case is one of degree and not of kind, or where the distinction is merely technical, *e.g.*, a person charged with felony could be found guilty of a misdemeanour.

A court-martial can record a special finding (*vide Chap. v.*). *R.P. 44, Act 56*

*Q.* What public documents are invariably received as evidence at a court-martial? *M.L.* *Ch. vi. pars. 37, 38*

*A.* Copies of Army Lists or Gazettes, copies of King's Regulations, Royal Warrants, Army Orders, records from regimental books, attestation papers to prove a man's enlistment. *Act 163*

*Q.* In the unavoidable absence of the writer, could an official letter from a C.O., stating he saw an officer drunk at a race meeting, and that he placed him under arrest, be received as evidence against the accused? *M.L.* *Ch. vi.* *par. 46*

*A.* No, although it is an official letter it is not a public document under the Act; it is hearsay evidence.

*Q.* Define *Hearsay Evidence.* Why is it not admissible as a rule? State the exceptional circumstances under which it can be received. *M.L.* *Ch. vi.*

*A.* It is the evidence of what a witness has heard another person say with regard to the facts in dispute; it includes also statements written or not by the authors of such statements or by others. *par. 46*

It is not received because—

1. No statement made with reference to a person charged with an offence which relates to the charge can be received in the absence of the accused.

2. Such statements are not on oath.

3. The accused not being present cannot examine its author, *e.g.*, A tells B in the absence of C that C stole a watch.

*Exceptions.*—A declaration made by the declarant as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, but only in cases of murder or manslaughter. *M.L. Ch. vi. 49, 50*

It must be proved that the dying man believed at the time he made this dying declaration that he was in actual danger of death and had no hope of recovery.

4. In trials for rape, and kindred offences against women, evidence is allowed to be given as to the fact that shortly after the commission of the offence the person against whom the offence was committed made a complaint about it, and as to the particular terms of the complaint so far as they relate to the charge. This is admissible for the purpose of showing that the conduct of the person against whom the offence was committed was consistent with the story told by her in the witness-box. *M.L. Ch. vi. 53*

5. When it is intended to prove the mental or bodily feelings of a person at a particular time, *e.g.*, in the Rugeley poisoning case, statements made by the deceased before his illness as to his state of health, and during his illness as to his symptoms, were admitted as evidence against the accused. *M.L. Ch. vi. par. 54*

6. A declaration, written or oral, made by a person since deceased against his pecuniary or proprietary interest, is admissible. If it is admitted, the whole statement of which it forms part becomes admissible. *M.L. Ch. vi. 55*

7. A statement, written or oral, which it is the duty of a person to make in his business, is admissible after his death, provided it was made contemporaneously with the act to which it relates. But it is only admissible to prove the facts which it was the duty of the person making the statement to observe, *e.g.*, on a trial for murder, the deceased, a police constable, had in the course of his duty informed his inspector where he was going, and what he was going to do. This was admitted against the accused, because the constable had stated he was going to watch the accused. *M.L. Ch. vi. par. 56*

## CHAPTER XI

Recent Alterations in the *Manual of Law*, the Army Act, and the Rules of Procedure, together with Alterations in the King's Regulations.

### THE FOLLOWING ARE AMENDMENTS TO THE MANUAL OF MILITARY LAW, 1907.

**The Army Act—**

**Sections—**

The use of threatening or insubordinate language regarding one superior to (in the sense that it is intended to be heard by) another superior officer constitutes the offence of using insubordinate language under this section (*vide Manual of Law, page 546*). *Act 8*

In all cases where a soldier is charged with desertion when under orders for embarkation for service abroad, a roll of the draft or a certified copy or extract showing that the accused was placed under orders for service abroad must be produced. The oral testimony of a N.C.O. is not sufficient. *Act 12*

If a soldier absents himself from embarkation for active or foreign service, the court, unless they have definite proof he absented himself intentionally to avoid embarkation, will find him guilty of absence without leave under Act 56, but such absence from parade, or failing to appear for parade ***which involves*** avoidance of embarkation, will add to the gravity of the offence.

(3) In par. (*b*) a sub-section (1) of section thirteen of the Army Act (which relates to fraudulent enlistment), the words " not subject to military law " repeal. *Act 13*

Where a soldier is charged with failing to appear at the place of parade appointed by his C.O., evidence should be produced that orders were given to him to parade. *Act 15*

The principles to be observed in estimating loss of or damage to equipment is laid down in pars. 99 and 100, Equipment Regulations, 1909. *Act 24*

In the case of a recruit who re-enlists after having been discharged owing to a misstatement as to his age, his age as shown by his birth certificate will be taken to be his correct age. *Act 33*

The effect of forfeiture of seniority of rank in the case of an N.C.O. is that his seniority in the rank he holds is alone affected. The period of his service in the rank is not otherwise affected. Thus, if a sergeant who was promoted to that rank on 19th April, 1909, were sentenced by a court-martial to take rank and precedence as if his appointment to that rank bore the date of 21st June, 1909, he would on the latter date, while having one day's service only to count for seniority, still count service for all other purposes in the rank of sergeant from the 19th April, 1907. *Act 44*

*Amendment of Army Act.*—46. With a view to reducing the number of cases which have to be sent for trial by courts-martial owing to the limited powers of punishment exerciseable by commanding officers, the maximum period of detention which may be awarded by a commanding officer who deals with a case summarily shall be twenty-eight days, and accordingly "twenty-eight" shall be substituted for "fourteen" in paragraph (*a*) of subsection (2) of section forty-six of the Army Act, and subsection (4) of the same section shall be repealed. *Act 46*

A N.C.O. may be severely reprimanded, reprimanded, or admonished by his C.O. *Act 46*

*Note* to *Act 47*, line 18, for fourteen substitute twenty-eight days, and in line 19 for "infrequent" *substitute* "rare occurrence." *Act 47*

Line 18, *note*, alter Militia, Yeomanry or Volunteers to Auxiliary Forces. *Act 48*

The soldier must have been absent twenty-one clear days before the court is held, the day the soldier first absented himself and the day the court first assembles is not included. Upon the trial for an offence under *Act 24 (2)* the declaration of the court of inquiry that certain articles were deficient is prima facie evidence that they were deficient. If no evidence except A Form, B 115, is obtainable, the prosecution is justified in proceeding on that alone, and if no evidence is given on behalf of the accused to disprove the fact stated in A Form, B 115, the court-martial may convict. Where, however, the accused produces evidence in contradiction of the finding of the court of inquiry with regard to any article in question, the prosecutor shall produce viva voce evidence in support of the case, so far as such articles are concerned. For such a purpose the court-martial might, if necessary, adjourn under *R.P. 65.* *Act 72*

After conviction (*note*, line 4) *delete*; *insert* "all variations of his original service being automatically cancelled. *Act 79*

After line 2, *note*, the effect of this subsection is that a soldier serving on a re-engagement, who is convicted by court-martial of desertion or fraudulent enlistment, or who, being liable to trial, has had his trial for either of those offences dispensed with (*Act 73*) by competent military authority, forfeits all prior service rendered during the period of such re-engagement, *i.e.*, from the day following that on which he completed twelve years' service. The Army Council may restore all or part of such forfeited service where either the soldier performs good and faithful service or a court-martial recommends it. *Act 84*

*K.R. par. 273, R.P. 49*

The Military Prison at the Curragh closed on 1st August, 1910. Soldiers sentenced in Ireland to be discharged with ignominy for offences of a purely military nature will be committed to the Military Prison at Woking. *Act 133*

The liability of a Special Reservist to maintain his wife and children comes under this section when he is subject to military law. *Act 145*

In England and Wales a copy of a conviction by a civil court of a person subject to military law cannot be obtained till ten days have elapsed since such conviction, and if an appeal is pending on the case not till that appeal is determined. The person applying for a copy shall satisfy the clerk of the court no appeal is pending, a certificate of such can be obtained by applying to the registrar of the Court of Criminal Appeal. *Act 164*

All officers belonging to a force raised in India or a colony, when attached to or doing duty with any part of the Regular, Reserve or Auxiliary Forces in the United Kingdom. *Act 175 par. 11*

A member of the Territorial Force can be called out to aid the civil power when he is subject to military law under *Act 176* (*6a*). *Act 176*

All N.C.O.s and men belonging to a force raised in India or a colony, when attached to or otherwise acting as part of or any portion of the Regular, Reserve or Auxiliary Forces in the United Kingdom. *Act 176 (8a)*

9. (1) In section one hundred and seventy-seven of the Army Act (which relates to persons belonging to Indian and Colonial Forces), after the words " whether within or without the limits of India or the colony," *insert* the words— *Act 177*

> " and any such law may apply to any such officers, N.C.O.s, and men, all or any of the provisions of this Act so far as they relate to the Regular Forces or any of the Auxiliary Forces, as the case may require, subject to such adaptations as may be necessary to make them applicable, and the provisions of this Act so applied shall, subject to such adaptations as aforesaid, be construed as if such officers, N.C.O.s and men were included in the expression ' the Regular Forces ' or ' the Auxiliary Forces,' as the case may require."

(2) In the same section for the words " respectively mentioned in the two preceding sections of this Act " *substitute* the words " of the Regular Forces."

10. Section one hundred and seventy-eight of the Army Act (which applies the Army Act to the Auxiliary Forces when subject to military law) shall extend to N.C.O.s and men of the Reserve Forces when subject to military law otherwise than when called out on permanent service, and accordingly in that section, after the words " in pursuance of this Act," *insert* the words— *Act 178*

> " and when N.C.O.s and men belonging to the Reserve Forces are subject to military law in pursuance of this Act, otherwise than when called out on permanent service,"

and after the words " men belonging to such Auxiliary," *insert* the words " or Reserve."

A soldier who is a N.C.O. can be reduced to a lower grade of N.C.O. or to the ranks by the Army Council, except in India, where the Commander-in-Chief can do so. *A. 183*

In sub-section (8) of section one hundred and ninety of the Army Act (which defines the expression " Regular Forces "), after the word " world " *insert* the words— *Act 190*

"including soldiers of the Reserve Forces when called out on permanent service and,"

and the words "and subject to this qualification, that when the Reserve Forces are subject to military law such forces become during the period of their being so subject part of the Regular Forces" repeal.

## ADDITIONS, ALTERATIONS, etc., IN THE RULES OF PROCEDURE.

**Military Law, page 453.**

In no case shall the officer who takes the summary of evidence cross-examine the accused on any statement he has made which is contained in that summary of evidence. *R.P. 4*

Except in the case of a regimental court-martial, the C.O. of the accused who has investigated the charge or remanded the accused for trial cannot afterwards act as convening officer in the same case, but must refer it to superior authority. *R.P. 17*

Any officer who has been the C.O. of the accused at any time between the commission of the offence and the date of trial inclusive, irrespective of the fact he did not deal with the case at issue, is ineligible to sit on the court-martial by which the accused soldier is tried. *R.P. 19*

Amendments made in the Rules of Procedure, 1907 :— *R.P. 47*

1. Rule 47. (i.) Lines 1 and 2, *delete* "or a non-commissioned officer," P.

(ii.) After "appointment" in line 7, *insert* fresh par.—

"In the case of a non-commissioned officer the court will sentence him to take rank and precedence as if his appointment to the rank held by him, and specified in the sentence, bore the date of some day specified in the sentence, and later than the actual date of his said appointment."

For Rule 51 B *substitute* "Upon receiving the proceedings, whether original or revised, may confirm or refuse confirmation, and the confirmation, or non-confirmation, shall be entered in and form part of the proceedings." *R.P. 51*

Rule of Procedure (1) Note B to Rule 51 on page 487, in line 27 and 28 for "Should be added after confirmation and separate from it" *substitute* "will be separate from and form no part of the proceedings." In no case will the confirming authority comment on a finding of not guilty or upon the inadequacy of a sentence.

*Note* lines 19, 20, *delete* "Promulgated either with the proceedings," *i.e.*, the confirming officer may direct observations recorded by him to be communicated in a separate minute to the members of the court, or in the orders of the command. *R.P. 53*

When a court-martial adjourns in order to consult the convening officer, its reasons are to be recorded in the proceedings, and the convening officers on each point raised clearly stated. *R.P. 79*

"R.P. 124. (A) A court of inquiry is an assembly of officers *R.P.124*

directed to collect evidence, and, if so required, to report with regard to any matter which may be referred to them.

"(B) A court of inquiry may be assembled by the Army Council or by the officer in command of any body of troops, whether belonging to one or more corps.

"(C) The court may be composed of any number of officers of any rank, and of any branch or department of the service, according to the nature of the investigation.

"(D) The court will be guided by the written instructions of the authority who assembled the court. The instructions will be full and specific, and will state the general character of the information required. They will also state whether a report is required or not."

(ii.) In paragraphs (H), (J) and (K), *substitute* "authority" for "officer" in every case where that word precedes the words "who assembled the court."

Rule 126 (C). Lines 2 and 3, *delete* "and the adjutant-general, as respects persons undergoing sentence in any place whatever,"

**ALTERATIONS IN THE KING'S REGULATIONS.**

(*a*) After "soldier" in line 1, *insert* "serving on his original engagement, *i.e.*, during the first twelve years of his service," *Par. 273*

(*b*) After "enlistment" in line 8, *add*—

"Similarly a soldier serving on a re-engagement who is convicted by court-martial of desertion or fraudulent enlistment, or who, being liable to trial, has had his trial for either of those offences dispensed with by the competent military authority, forfeits all prior service rendered by him during the period of such re-engagement, *i.e.*, from the day following that on which he completed twelve years' service—and is liable to serve for the term of his re-engagement, reckoned from the date of conviction or of the order dispensing with his trial."

(*c*) For lines 20 and 21, *substitute*— *K.R.*

"In cases of desertion— *Par.273*

(i.) If the soldier was serving on his original engagement at the date of desertion, the amounts actually reckoned at date of desertion.

(ii.) If serving on a re-engagement at the date of desertion, the amounts actually reckoned towards completion of such re-engagement at date of desertion."

The G.O.C.-in-C. of a command will, once in every three years, insert a notification in such newspapers as have a wide circulation within the command, calling attention to the fact that, under the Army Act, a soldier cannot be placed under stoppages of pay for a private debt, and that, if the inhabitants suffer soldiers to contract debts, they will do so at their own risk. *K.R. Par.442*

The number of insertions should be limited as far as possible, consistent with the matter being generally known.

When the convening officer receives the proceedings he may

confirm, refuse to confirm, or send back the finding and sentence, or either of them for revision, but only once. The court have power without any direction to revise the sentence also. If the confirming officer comments on the proceedings, but will be separate from it, they will be communicated in a separate minute to the members of the court, or in special cases when the interest of discipline require it, they can be made known in orders of the command. He must not comment on a finding of not guilty, or on the leniency of the sentence, and great care is to be taken not to interfere with the discretion of the court. *Sub. for* K.R. *Par. 589*

To par. 595, K.R., *add*—

"The proceedings of any general court-martial or district court-martial which have not resulted in a conviction, or for any reason have not been confirmed, will be sent to the judge-advocate-general." *Par 595* K.R.

After line 12, *insert*— *Par. 1916*

"When the charge is under Section 19, and the particulars show that the offence was committed when on duty or after having been warned for duty, the entry in conduct sheet should be—

"Drunkenness—on duty" or

"Drunkenness—having been warned for duty."

Line 1, *delete* "*" after conviction, and *delete* footnote to which it relates. *K.R. par. 1916*

Lines 3 and 4, *delete* "The offender has been convicted by either of these courts, and no punishment has been awarded, and also when" *(iii.), par. 7. A.O., 106/1910*

*Insert* new sub-paragraph *(iii.) (a)*— *K.R. (8), par. 1916*

"Every case in which a soldier has been bound over by a court of ordinary criminal jurisdiction or by a court of summary jurisdiction to appear for conviction or judgment.

"In cases where the C.O. is of opinion that a regimental entry should not be made, he may represent the case for decision of an officer not below the rank of brigadier-general. When a regimental entry is made, a certified copy of the order of the court shall be annexed to the soldiers' regimental conduct sheet."

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